NEXT ANNUAL MEETING WILL BE HELD AT LOS ANGELES, JULY 16-19

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Chief Justice Johnston Completes Fifty Years on Kansas Supreme Bench—Notable Tribute

COMPLETION of fifty years of service on the Kansas Supreme Bench was the occasion for a notable tribute to Chief Justice William A. Johnston at Topeka on December 1. Over five hundred guests assembled at a banquet given in his honor. Every judicial district in the State, and almost every county, had a personal representative there, and congratulatory messages were received from Chief Justice Hughes of the United States Supreme Court, former Justice Oliver Wendell Holmes of that tribunal, and from a host of distinguished legal personages beside.

Former Justice Oliver Wendell Holmes sent the following leter:

"My Dear Chief Justice:

"Half a century! My feeling is you will hear that phrase many times this night. By an accident of Time I think it is given me to understand a little of its meaning for you. I think you will agree with me that 50 years is a poor pittance to offer our mistress, the law. So much to do and so little done.

"You are fortune's favorite. The ballot box continuously affords your people an opportunity to articulate their appreciation of your devotion these many years—many by the span of human life, so few in the web of the law.

"Yet even beyond a well deserved pride in perennial re-election and such a spontaneous expression of tribute as it is your lot to be given tonight, I am sure that yours is a deeper satisfaction. As you look back tonight from this convenient breathing space at those long hours of effort, hours sometimes of despair, and often of exultation, you are content.

"This is the best of life—the job well done.

"Having attempted the metaphor of the breathing space, may I relapse into its colloquial extension?—that, with your 'second wind' the years before you will mellow that content. I deeply regret that I cannot be with you this night. Very sincerely yours, O. W. Holmes."

And Chief Justice Hughes sent this message:

"I am glad to know of the tribute to Chief Justice Johnston of the supreme court of Kansas in recognition of his 50 years of judicial service. His career is memorable not merely because of its extraordinary length, but because with his distinguished ability, industry and fidelity he has enriched the traditions of judicial service and has buttressed the essential foundations of that service in the confidence of the people. Kindly present to Chief Justice Johnston my most cordial felicitations and best wishes."

Following the invocation by Dr. George W. Allison, the toastmaster, Douglas Hudson, of Fort Scott, president of the Kansas State Bar Association, opened the proceedings with a few appropriate remarks. He then read the messages and telegrams of congratulation which had been received. Afterwards, according to the account in the Topeka Daily Capital of Dec. 2, "eulogics, comments, anecdotes, reminiscences, biographical sketches, tributes—always tributes—were paid Justice Johnston by Fred Dumont Smith of Hutchinson, past president of the Bar Association; Justice Rosseau Burch, ranking associate justice and in line to succeed as chief justice; Judge Otis E. Hungate of the Shawnee county district court; Tom McNeal of the Kansas Farmer and Circuit Judge George T. McDermott.

"Following the eloquent tribute from Judge McDermott, which closed the formal speaking program, Douglas Hudson presented the memorial autograph book from the Kansas Bar Association, in which the autographs of more than 3,000 Kansas lawyers appear, as well as the letters and messages received.

"The foreword of the book, bound in blue morocco, is the following hand-lettered greeting, penned by W. F. Lilleston of Wichita:

" 'To the Honorable William A. Johnston, Chief Justice of the Supreme Court of Kansas:

" 'We, the lawyers of Kansas, salute and congratulate our beloved Chief Justice upon this, the fiftieth consecutive anniversary of his elevation to the supreme court. The legal profession of this state is a beneficiary of his prestige

and stands in the reflected glory of his private life and his public service. In his high position the power of restraint and the restraint of power are one and the same; yet novice and Nestor of the bar, alike, have felt the balm and healing of his gentle tact. Scholarship without pedantry, courage without bravado, popularity without conceit, have marked his character and career. His record of continuous service on the same appellate bench is unprecedented in America, and it exceeds by a quarter of a century the longest period for which any English chancellor ever held the Seal of State. Today his Golden Jubilee is the festival of a great brotherhood bound together by a common emotion of reverence and felicitation. To him and to the loyal helpmate of his hearth, the lawyers of Kansas say, Congratulations and Godspeed.'"

In closing the program Chief Justice Johnston announced that he did not expect to be a candidate to succeed himself. He said:

"As I approach 90 years of age I am warned that I am nearing the end. No matter how robust one may be, he knows that when he reaches the period in which I am living, that he soon must go the way of all flesh, must weaken and pass out.

"I have hoped that I might be strong enough to serve out my present term, more than two years of which is expired, but it is uncertain. I am admonished by warnings that my eyes are beginning to weaken, my ears are limping some, and so I have determined not to ask for a renewal of my official life.

"I will then be about 90 years of age, and if alive then I will surrender my office with a strong feeling of gratitude to the members of the bar and others who have treated me so generously and kindly, keeping me in office for a half century continuously. When the time comes for me to retire, when I must sever my relations with the members of the bar, I leave you with a strong feeling of gratitude for your unusual kindness to me and will surrender to the inevitable with courage and contentment."

Chief Justice Johnston's judicial career has not only been notable for its length—he holds the record in this country for continuous service on the same appellate court—but for the high character of the judicial service rendered and for a continuous testimony of popular affection. No matter what might be the trend of politics in Kansas, Judge Johnston was always reelected. His has certainly been a unique career of which not only Kansas but the nation may well be proud.

"Unauthorized Practice News"

THE Committee on Unauthorized Practice of the Law of the American Bar Association has just issued the first number of "Unauthorized Practice News," a current review of bar activities to curb the unlawful practice of the law. It is contemplated that this will be published monthly and anyone desiring to receive it without charge should write the American Bar Association at 1140 North Dearborn St., Chicago, and make that request.

In the first issue the recent decision in Land Title Abstract and Trust Company vs. Jack B. Dworken, et al. is summarized and pertinent paragraphs from it are quoted. The Supreme Court of Ohio sustained the contention of the plaintiff in those cases, thereby upholding every claim which was presented by the bar.

A declaration of principles signed by the Cleveland banks is published in full. This agreement was entered into as a result of negotiations with the Cleveland Bar Association, and as a result a suit filed by the Bar Association has been dismissed. Activities of the Unlawful Practice Committee of the Tampa Bar Association are also detailed.

American Law Institutes Issues Two Volumes of Restatement of Torts

THE American Law Institute Publishers have just printed the first two volumes of the Restatement of Torts—dealing with "Intentional Harms to Persons, Lands and Chattels" and "Negligence." The volumes are uniform with those already published on "Contracts" and "Agency." The introduction to the first volume gives the following information as to projected further treatment of the subject:

"The Institute's plan of work on the Restatement of the Law of Torts contemplates the publication of the subject in four or five volumes containing, besides the Divisions now published relating to Intentional Harms to Persons, Land and Chattels and to Negligence, the Divisions relating to Liability Without Fault; Defamation; Deceit and Malicious Prosecution Harms to Contract Relations Harms to Domestic Relations; Legal and Equitable Relief Against Tortfeasors. The completion of the publication of these remaining Divisions will not be possible inside of two or three years. But Volume I and Volume II are in themselves complete works whose value does not depend upon having available at the same time the unpublished part of the subject Torts. Each volume being a separate unit has an index. When, however, the last volume of Torts is published it will necessarily contain an index to the entire subject."

"The Torts group," we are further told in the Introduction, "began work on that portion of the present Volume which relates to Harms to the Person in June, 1923, tentative drafts of the Chapters relating to this matter being submitted to the Annual Meetings of the Institute in 1925, '26 and '27. Thereafter, work on the remainder of the present Volume and the Volume on Negligence proceeded simultaneously, tentative drafts of the different chapters being considered at the Annual Meetings from 1928 to 1933. In 1933, work on the revision of all these tentative drafts was begun and the sections relating to Conversion in Volume One completed. This revision and the additional sections were considered by the Council at their meetings in December, 1933, and February, 1934. After some amendments the revision was approved and submitted to the members of the Institute. The Annual Meeting May 10-12, 1934, considered the draft and at the conclusion of its deliberations concurred with the Council in directing its publication as the Institute's Restatement of the Law of Torts, relating to Intentional Harms to Persons, Land and Chattels and to Negligence."

Attorney Generals Asked to Cooperate to Uphold States Point of View

THE need for a proper presentation of the views of the States in regard to questions involving Federal and State powers which are constantly arising under present conditions is pointed out in a letter just sent by Hon. Ernest L. Averill, of Connecticut, President of the National Association of Attorneys General to the members of that organization. The letter says in part:

"The past two years have furnished the Attorneys-General of the several states with many problems which have been of more than local significance and local effect. Questions have been raised and problems presented, the answers to and solutions of which will have a vital effect upon the future of our governmental structure. Inevitably the tremendous increase in the functions of the Federal Government as well as those of the several States has brought to the fore the importance of appraising and evaluating the powers delegated to the Federal Government under the Constitution of the United States and the powers retained by the several states and the people thereof in that same great document. . .

"It is apparent from the legislation of both the Congress of the United

States and of the several states that the present and near future will witness many legal enquiries which must be settled by our Courts. It is our duty to lend all the assistance within our power to adequately and fully present the several questions from the viewpoint of the States so that the decisions of the Courts may represent conclusions based upon a comprehensive and exhaustive presentation of all factual and legal aspects of the problems involved.

"We cannot afford to underestimate our duty to our several States nor the judiciary charged with the ultimate solution of these problems. No question can be satisfactorily or rightly answered that has not been adequately and comprehensively presented. The responsibility for sound judicial decree rests not alone upon the judge or judges called upon to decide new questions of law but equally upon the lawyers whose duty it is to present the issues to the court. It is only upon the most painstaking and thorough preparation and presentation of an important question of law that a sound judgment can be expected. Let us not fail to fulfill our part in the determination of the great questions confronting the United States and the several States which comprise our nation.

"To facilitate our work, to gain a comprehensive idea of the entire problem, to make possible a general furnishing of information, and to plan a concerted effort to make possible the best possible presentation of our problems, it is requested that you send in a synopsis of all questions which may be pending in your State affecting the relationship of the Federal and State governments. Include all questions pending before you for your opinion, opinions which have been rendered, questions before Federal bureaus and departments and cases pending or decided in either the Federal or State Courts."

Nevada Is Twenty-Fifth State to Require Two Years of College for Admission to the Bar

THE changes in rules for admission to the Nevada bar adopted by the Supreme Court of that state on November 17, 1934, are of far-reaching significance in the progress of higher standards of legal education and admission to the bar throughout the country. By this action of its Court, Nevada becomes the twenty-fifth state either presently or prospectively requiring two years of college work or its equivalent of substantially all applicants for admission to the bar. This makes a total of more than half of the states of the Union, containing more than sixty percent of the lawyer-population of the country, which have this requirement.

The rule by which the two-year college standard pushed past the numerical half-way mark in the progress of its adoption by the various states, also contains a provision requiring three years of law study for bar admission. This is also an important advance, as Nevada previously had no requirements either of general education or legal training. The rule adopted is as follows:

"No applicant shall be eligible for examination until his application shall have been referred to the State Bar of Nevada and shall have received the written approval of the board of State Bar Examiners; and all applicants for admission on examination, who commence the study of law after April 15, 1934, and all applicants applying for permission to take the state bar examination after January 1, 1936, shall present sufficient evidence to establish to the satisfaction of the Supreme Court that said applicant has received a high school diploma, or its equivalent, and has completed two years of college work, or its equivalent, and has spent three years studying law in a law school or has spent an equivalent amount of time in private or office study of law."

In addition to establishing these educational requirements, the Supreme Court increased the fee to be paid by attorneys of other jurisdictions applying to be admitted on motion to the Nevada bar, in order to provide funds for the investigation of their character by The National Conference of Bar Examiners under its "foreign attorney" plan.

Deaths of Members Reported to Headquarters

ANDREW A. BRUCE, Professor of Law at Northwestern University for the past twelve years, died in Chicago on December 8th. Judge Bruce was born in Nunda Drug, India, on April 16, 1866, the son of General Edward A. Bruce of the British Army. He came to America when he was fifteen years of age, was graduated from the University of Wisconsin in 1890, and took his law degree there two years later.

After practicing law in Chicago for five years, he returned to the University of Wisconsin in 1898 as Professor of Law. Later he became Dean of the College of Law of the University of North Dakota, and in 1911 became an Associate Supreme Court Justice of that state, later becoming Chief Justice.

Throughout his professional career, Judge Bruce had been identified with public spirited movements. He helped Miss Jane Addams organize Hull House in Chicago, and helped enact and enforce the child labor and "sweat shop" laws of Illinois and Wisconsin. He was President of the Institute of Criminal Law and Criminology and was the author of several books on Law.

He had been a member of the National Conference of Commissioners on Uniform State Laws for more than ten years, and had served on various other sections and committees of the American Bar Association.

R. F. Dunlap, Hinton, W. Va., Oct. 28.

W. A. Colston, Cleveland, Ohio, Nov. 6.

William A. Feuchs, Port Jarvis, N. Y., Nov. 4.

Lynn S. Bentley, Arcade, N. Y., Nov. 15.

Lewis Starr, Camden, N. J., Nov. 3.

E. C. Nichols, Muscatine, Ia., Oct. 22.

Leo H. Fisher, Huntingbird, Ind., Oct. 26.

Augustus Kelly, Chicago, Ill., November, 1934.

Elmer E. Whitted, Denver, Colo., Oct. 18.

Handbook on Judicial Selection

THE Handbook on Judicial Selection, which is being prepared by Professor Evan Haynes of the University of California, should be ready for distribution in January. It will be for sale at the American Bar Association headquarters at $1.00 per copy, postage prepaid.

Twenty Years After

NO, this has no reference to Dumas' novel of that name. It is simply to call attention to the fact, which many of our members will no doubt find of interest, that Judge James F. Ailshie, who twenty years ago resigned from the Supreme Bench of Idaho to enter the practice, was elected again to that position by a substantial majority. Judge Ailshie has held many important positions in the Association.

National Conference of Commissioners on Uniform State Laws

The next Annual Meeting of the Conference will be held at the Biltmore Hotel, Los Angeles, California, beginning Tuesday, July 9, 1935.

Applications for hotel reservations should be made to the Executive Secretary of the American Bar Association, 1140 North Dearborn Street, Chicago, Illinois.

THE ATTORNEY GENERAL'S CONFERENCE ON CRIME

First Meeting of the Kind Ever Held under Government Sponsorship Attacks Main Phases of Crime Problem and Makes Definite Recommendations for Constructive Action—President Roosevelt Backs Conference and Calls for United Public Support of Its Conclusions—Keynote Address Made by Attorney General Cummings—Experts in Different Fields Read Instructive Papers—All of American Bar Association's Recently Adopted Recommendations for Improvement of Criminal Procedure Approved—Conference Becomes Permanent Organization—Mood of Action Dominates Proceedings

THE Attorney General's Conference on Crime, held at Washington, D. C., on Dec. 10-13, has come—but it has not gone. It has become a "continuing organization, with meetings biennially or oftener in Washington, on the call of the Attorney-General." What is more, it has initiated a program of permanent value, which its future meetings will reinforce and supplement as the occasion demands. The six hundred representatives of all that is most competent in the field of crime study and prevention have "planned no little thing," but have launched a program large and bold enough to capture the imaginations of men—laymen and experts alike.

An intense practicality dominated the proceedings, from the stirring appeal of the nation's President to the numerous papers discussing vital aspects of the problem. Time and again the necessity of the protection of the public from the crime menace was emphasized as the main objective of the gathering. But this central problem of protection was not envisaged as a mere man-hunt for offenders and the infliction of a punishment that would supposedly fit the crime—though that aspect was by no means minimized—but as one involving social and individual factors of the first importance. Thus, for example, it was brought out that properly administered probation and parole was essentially a protective measure for society in addition to its rehabilitation value; so of reform of intolerable jail conditions, and the treatment of those social conditions in certain parts of large communities which have been shown to breed juvenile delinquencies to an inordinate extent and thus to furnish the beginnings of later criminal careers.

Attorney-General Cummings, in expressing his satisfaction with its work at the conclusion of the proceedings, declared that "when this conference passes into history it will leave behind it concrete, practical results that can be translated into effective action." These results may be divided into the definite things proposed in the resolutions and the definite will to see that they are done which was generated at the meeting and which should extend in widening circles to every part of the country. In other words, the conference was dynamic as well as deliberative, and one aspect was fully as important as the other. And it was as non-partisan as crime itself.

Conference Crime Program in Brief

Here, in brief, are the things which the Conference presents as its present program. They are the substance of the resolutions drawn up by the committee of which Hon. Scott M. Loftin, President of the American Bar Association, was chairman. These resolutions, which were enthusiastically adopted, are printed in full further on in this account of the proceedings.

1. Decided that the Conference should be developed into a continuous organization, with meetings biennially or oftener in Washington, on the call of the Attorney-General.

2. On the recommendation of the Attorney-General, urged the establishment at Washington of a national scientific and educational center for the better training of a carefully selected personnel in the field of criminal law administration and the treatment of crime and criminals.

3. Stressed the necessity of effective cooperation by all departments and agencies of Federal, State, county and local authorities as essential to the accomplishment of its great objective; disclaimed intention of encroachment on State authority; and recommended that the various States give serious consideration to a better form of coordinated control by means of a State Department of Justice or otherwise.

4. Recognized that the most fundamental and hopeful measures of crime prevention are those directed toward discovering the underlying factors in the delinquency of children and coordinating the resources of the home, the school and the community for child training and child guidance; and urged State and National leadership in fostering the development of such agencies.

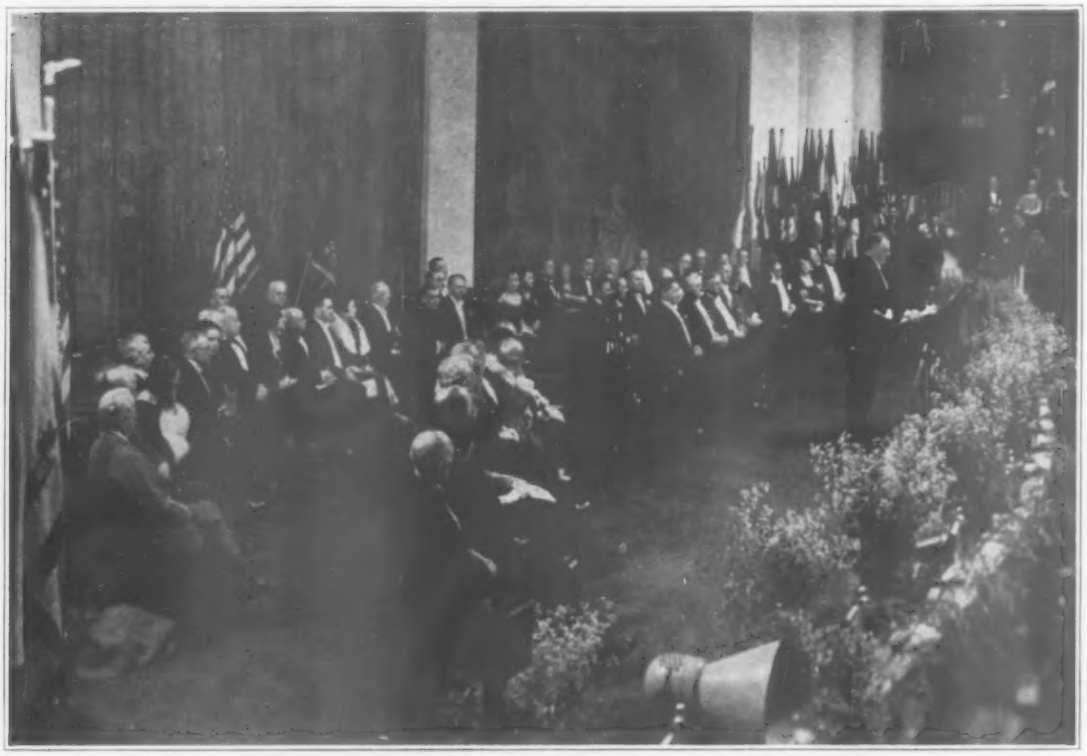
5. Condemned the use of methods of dealing with industrial conflicts and racial antagonisms which are not in accord with orderly and legal procedure.

6. Deplored the abuse of the parole and pardon power and recommended the continued use of parole as the safest method of release from prison under certain minimum conditions.

7. Recommended to all Legislatures meeting in 1935 a careful consideration of procedural recommendations, and particularly the Model Code of Criminal Procedure prepared by the American Law Institute and approved by the American Bar Association and the Association of American Law Schools; and specifically recommended certain provisions. (See full resolution.)

8. Deplored the practice of unduly dramatizing stories of crime and glorifying the criminal, and commended the activities of those newspapers and periodicals which have aided in supporting the law enforcing authorities.

9. Specifically condemned certain evils and



PRESIDENT ROOSEVELT ADDRESSING CRIME CONFERENCE

recommended that the Conference study and recommend remedial action therefor.

American Bar Association's Indorsements Followed

An examination of the full text of the Conference's program for securing substantial improvement in criminal procedure will show that it has adopted the American Bar Association's plan in toto. The recommendations under this head are exactly those which were adopted at the Milwaukee meeting of the Association. While it is only natural that this should be so, it must be none the less gratifying to those members of the Assocition who have worked so long and effectively in this field to find their proposals receiving such wholehearted acceptance. As to the Association's recommendation that the States provide for State Departments of Justice, for the purpose of coordinating administration and enforcement, it will be noted that the Conference approved it as one, but not as an exclusive, means of securing a better form of coordinated control.

Unique Character of Conference

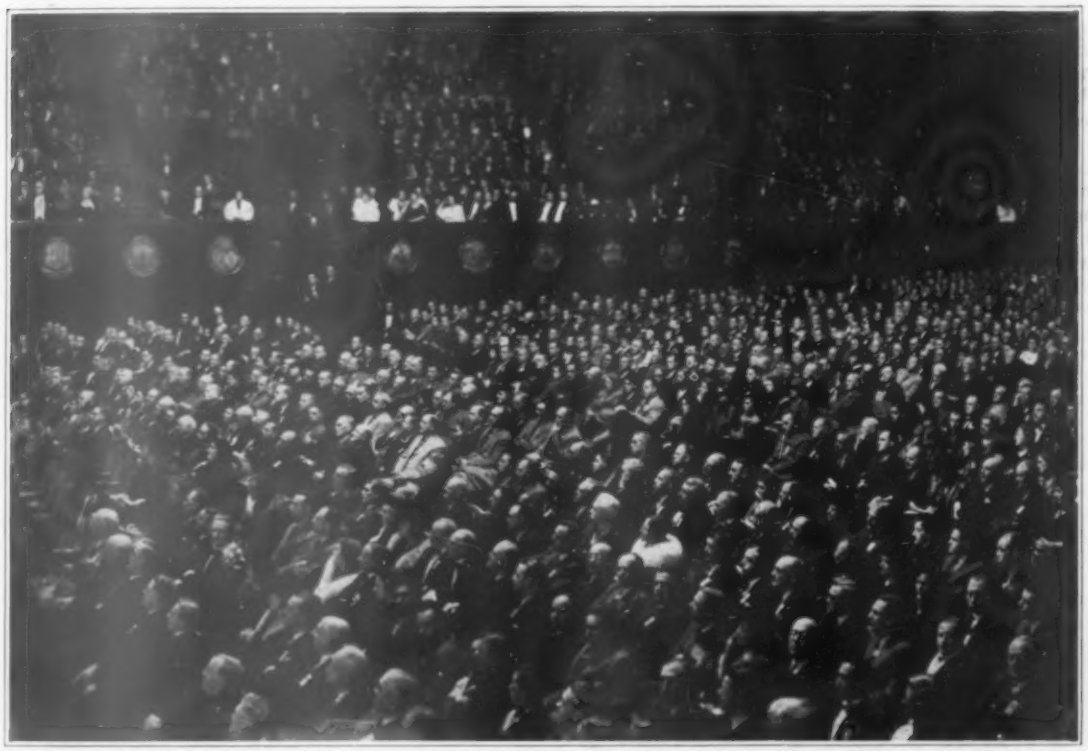
The Conference was unique in that it was the first gathering of its kind which has ever been officially sponsored by the Government. Other meetings and conventions of various associations working on this problem have been held, but there has been none which included persons with such a wide range of interests concerning the crime problem nor has there ever been a meeting which included so many distinguished delegates. Governors of States, District Attorneys, Bar Association representatives, Attorneys General, Chiefs of Police, Members of Crime Commissions, Judges, Sociologists, Criminologists, Psychiatrists and experts in many different fields were present for registration in the great hall of the magnificent new Department of Justice building on the morning of December 10.

That afternoon a reception to the delegates was given by the Attorney General in his spacious suite of offices, followed by a tea in the library. In addition to the Attorney General and Mrs. Cummings, Mr. Patrick Hurley, former Secretary of War and Chairman of the Reception Committee, welcomed those attending the conference in an official capacity. Of those in attendance, 204 were lawyers, and undoubtedly the legal profession was much more fully represented than any other group.

Attorney General Delivers Keynote Address

The first session of the conference was held the same evening in Constitution Hall and practically every seat was taken when Mr. Hurley, Chairman of the Reception Committee, introduced the Attorney General, Homer S. Cummings, who delivered the keynote address. As head of the Department of Justice, he welcomed the delegates and expressed the hope that their deliberations would not only be successful but would be productive of concrete results. He urged closer cooperation between law enforcement agencies and suggested the creation of a national laboratory and training school which would take in the various steps in criminal law enforcement. Along that line he spoke as follows:

"Personally, I am satisfied . . . that we must have a great national scientific and educational center for work in this field. Whether this should be



A SECTION OF AUDIENCE AT OPENING SESSION OF CRIME CONFERENCE

called an institute of criminology or a Federal school for training in law administration; whether it should include, at its inception, a degree-granting academy for those who may be selected and trained for professional careers; or whether it should begin with the coordination of already existing units of instruction and research and develop gradually—these are less important questions than that we should declare ourselves clearly upon the underlying proposition that there is need for training and research of this type and that it can be done.

"In addition to the matter of a permanent structure of this kind, there are many other points upon which I wish your advice and suggestion. The way seems open, by means of interstate compacts, uniform laws and Federal and State legislative enactments to increase the effectiveness of both State and Federal agencies, particularly at points of contact and possible coordination. You will observe from the program that much consideration will be given in the addresses, and during the discussion periods, to matters of this sort."

He was followed by Mr. Henry L. Stimson, former Secretary of War and Secretary of State, who proposed indirectly the adoption of statewide police systems such as Pennsylvania started nearly thirty years ago and which ten other states have adopted since then. Mr. Stimson cited the possibilities of the Federal Department of Justice becoming, with the cooperation of the states, a leader and a clearing house for such police activities as would offset the present advantage of the criminal.

Mr. Stimson also took cognizance of one of the crucial problems of the conference in reference to how far the work of the Department of Justice should go and just what form of interrelation there should be between the agencies representing the state and Federal governments, and agreed with Mr. Cummings that there is pressure to "have the Federal Government take over generally the work of apprehending conspicuous criminals." However, he expressed the hope that this would not be brought up and said that Congress, in its recent legislation, has gone as far in this direction as it can safely go. Mr. Stimson referred to the efficiency of the English courts and recalled the murder trial which took place in England during the week that the American Bar Association was in London and related the speed with which that entire affair was disposed of.

President Roosevelt Backs Undertaking

Immediately on the conclusion of Mr. Stimson's speech, the President of the United States entered the hall and was given an enthusiastic ovation by the audience. He praised the work of the Department of Justice and paid tribute to officials and citizens who have been working with increasing effectiveness to solve the crime problem. He defined the two-fold task of the meeting as follows:

"The task of this thoroughly representative conference is two-fold.

"First, I ask you to plan and to construct with scientific care a constantly improving administrative structure—a structure which will tie together every crime-preventing, law-enforcing agency of every branch of government—the Federal Government, the forty-eight State governments, and all

of local governments, including counties, cities and towns.

"Your second task is of equal importance. An administrative structure that is perfect will still be ineffective in its results unless the people of the United States understand the larger purposes and cooperate with these purposes.

"I ask you, therefore, to do all in your power to interpret the problem of crime to the people of this country. They must realize the many implications of that word 'crime.' It is not enough that they become interested in one phase only. At one moment popular resentment and anger may be roused by an outbreak of some particular form of crime such, for example, as widespread banditry; or at another moment of appalling kidnappings; or at another of widespread drug peddling; or at another of horrifying lynchings.

"It is your positive duty to keep before the country the facts in regard to crime as a whole—great crimes, lesser crimes and little crimes—to build up a body of public opinion which, I regret to be compelled to say, is not in this day and age sufficiently active or alive to the situation in which we find ourselves.

"I want the backing of every man, every woman and every adolescent child in every State of the United States and in every county of every State—their backing for what you and the officers of law and order are trying to accomplish.

"The sustained interest and assistance of the organizations here represented can become a public service of high significance in the social life of the nation—a service to which the American people, I am confident, will not fail to respond."

Permanent Organization Effected

Earlier in the session the meeting organized and the Attorney General was elected Permanent Chairman and Mr. Justin Miller, now a special assistant to the Solicitor General, and for several years Chairman of the Section on Criminal Law of the American Bar Association, was made Permanent Secretary. President Scott M. Loftin of the American Bar Association was then appointed Chairman of the Resolutions Committee along with the following other members: Senator Harry F. Ashurst, Arizona; Sanford Bates, director of the Federal Prison Bureau; E. R. Cass, secretary of the American Prison Association; Dean Charles Clark, of the Yale Law School; J. Edgar Hoover, director of the Division of Investigation, Department of Justice; Joseph B. Keenan, Assistant Attorney General; Katherine F. Lenroot, chief of the Children's Bureau; Justin Miller, dean of the Duke University Law School and special assistant Attorney General; Will Shafroth, Denver lawyer; Peter J. Siccardi, president of the International Association of Chiefs of Police; Representative Hatton W. Sumners, Texas, and Senator Arthur H. Vandenberg, Michigan.

Main Business of Conference Begins

The main business of the Conference began with the session Tuesday morning. That session witnessed the presentation of a number of significant papers, followed by a general discussion of the subjects treated. These papers set a high standard, which was maintained throughout the following sessions.

Hon. Clarence E. Martin, former President of the American Bar Association, presided at this session. In his opening remarks he said that the nation owed to the Attorney General and his staff a debt of gratitude for the opportunity of cooperative action which the Conference afforded. "This Conference reflects in a peculiar manner," he said, "the present attitude of our people. Cooperation, in law observance, must exist on the part of the States, if local enforcement is to remain. And Federal assumption can mean only the complete admission that local self-government, the pride of a democratic people, is a failure. Federal assistance and cooperation, however, as reflected in this conference, is but the help that good neighbors interested in the common welfare give to each other to attain lasting and common ends. It is the manifestation of true Americanism.

"During the past year that assistance, Mr. Attorney General, has been marked, constructive and effective. Here then is our opportunity. An enlightened public sentiment exists; indeed, a long-suffering people demand requisite action. Are we capable of the task imposed on us?"

Mr. Martin then touched briefly on the situation in respect to crime in which the nation now finds itself, the need for coordination of various agencies, and the demand for reforms in criminal procedure—which he especially commended to the Governors, Attorneys General and Legislatures of the States. He concluded by getting back to the fundamental fact that all law enforcement depends on the moral calibre of the people and to the necessity of awakening the people to a realization of the danger that confronts them.

J. Edgar Hoover on "Detection and Apprehension"

The first subject on the program was "Detection and Apprehension," and it was assigned most fitly to J. Edgar Hoover, Director of the Division of Investigation of the United States Department of Justice. Mr. Hoover touched on some of the things the Department has been able to achieve and declared that they were accomplished "by the only means that can form a true offensive against crime—the wholehearted cooperation of city, state and national law enforcement agencies, each aiding the other to form a network through which the criminal could find no loophole." And he expressed his firm belief that when "the United States can have absolute cooperation and closely knit programs of detection and apprehension worked out among all of its law enforcement agencies, then indeed will we begin to enjoy the minimum of law infractions to which this country is entitled."

Divorce from Political Influence Urged

Mr. Hoover's denunciation of the malign influence of politics in the field of detection, apprehension and punishment of criminals was unusually strong and unquestionably sound. He said, in part:

"The campaign against crime depends as much upon the county sheriff as upon the police of the largest city; each must be alert, determined and eager to help the other. We already have the groundwork for the best and only kind of a national police which America will tolerate—local officers with a knowledge of local conditions and local criminals. These men, with the support of the Federal Government, are all that is needed, as far

(*Continued on Page* 50)

RESOLUTIONS ADOPTED BY THE CRIME CONFERENCE

PREAMBLE

FOR the first time there has been convened at the capital of the Nation, under the sponsorship of the Attorney General of the United States, a Conference on Crime in which representatives of the Federal, State, territorial and local governments have participated, as well as of more than 75 organizations the interests and activities of which bear upon this problem. Its meetings have been devoted to the scientific study and practical fulfillment of the first duty of government—which is to protect the lives and property of its citizens. There has been presented at this Conference overwhelming evidence of an intolerable breakdown of law and order throughout the country. It is inconceivable that this Nation can continue to permit murders, pillaging and racketeering with impunity.

Now, finishing its deliberations after four days of discussion, and in the sincere belief that no practical program of crime amelioration can be effectively initiated without the vitally sustaining force of public opinion, the Attorney General's Conference on Crime brings its conclusions to the attention of the American people and solicits from them in their home communities, as well as in the wider political jurisdictions, their active and aggressive support for the following resolutions:

I

That the Conference records its satisfaction at the substantial achievements of the Conference in informing and stimulating the forces of law enforcement in their difficult but vital tasks and even more in the promise it gives of earnest and persistent study and effort for the future. It therefore expresses its appreciation of the constructive leadership of the Attorney General, shown in the conception, the organization and the successful execution of the plan for this meeting; and its further appreciation of the disinterested service of the more than 600 delegates, and the large number of visitors, who at great personal sacrifice of time and money, have exhibited a fine spirit of public obligation by their attendance here; and, further recommends that this Conference be developed into a continuing organization, with meetings biennially or oftener in Washington, on the call of the Attorney General.

II

That the Conference on Crime, endorsing the recommendation of the Attorney General, urges that a national scientific and educational center be established in Washington, D. C., for the better training of carefully selected personnel in the broad field of criminal law administration and the treatment of crime and criminals. It further recommends that an advisory committee be appointed by the Attorney General to consider and report to him ways and means of accomplishing the purpose of this resolution.

III

That one of the outstanding benefits of this Conference has been an increased mutual understanding of our common problems by all groups. Effective cooperation by all departments and agencies of Federal, State, county and local authorities is essential to the accomplishment of our great objective. No encroachment upon State authority is intended. On the other hand, the Conference urges the strengthening of State resources. Especially in view of the deplorable condition of disorganization which exists in local law enforcement units, it is recommended that the various States give serious consideration to a better form of coordinated control by means of a State department of justice or otherwise. Modern conditions demand modern methods. The Federal Government should stand ready within the limits of Federal law to offer aid and support as and when needed. In many such instances local, county and State activities can thus be effectively assisted.

The recently authorized State Compact Plan should help the States themselves in the achievement of more effective cooperation.

The major portion of the task of crime repression should still remain with local authorities whose devotion to the cause of law enforcement has been so amply demonstrated by their enthusiastic participation in this Conference and their wholehearted willingness to join with others in the solution of its problems, as well as by increasing evidences of success in meeting the challenge of crime in their own communities.

IV

That the Conference recognizes that criminal careers usually originate in the early years of neglected childhood and that the most fundamental and hopeful measures of crime prevention are those directed toward discovering the underlying factors in the delinquency of children and strengthening and coordinating the resources of the home, the school, and the community for child training and child guidance. It commends the progress that has been made in certain States and localities in drawing together through such agencies as coordinating councils all available local forces to combat unwholesome influences upon youth. It urges State and National leadership through appropriate governmental and voluntary organizations, in fostering the development of these coordinating agencies, the provision of constructive educational, vocational and recreational opportunities for youth, and the provision of competent, skilled service to children in need of guidance and correction.

V

That the Conference condemns the use of methods of dealing with industrial conflicts and racial antagonisms which are not in accord with orderly and lawful procedures, and urges the administration of all phases of public safety by legally constituted law enforcement agencies only.

VI

That the Conference deplores the abuse of the parole and the pardon power as tending to undermine respect for law and order. Parole when cour-

ageously and intelligently applied is an integral and necessary part of a protective penal system.

The Conference recommends the continued use of parole as the safest method of release from prison, but under the following minimum conditions:

1. The minimum and maximum of indeterminate sentences should be compatible with adequate punishment, rehabilitation and public welfare and protection.
2. Paroles should be granted only by a full time salaried Board of duly qualified persons.
3. Full information should be available and sought for the use of the Board as to the prisoners' records, habits, environment, family and prospects.
4. The names of all persons endorsing a prisoner for parole should be made public on request of the press or any responsible person or organization.
5. No parole should be granted except where adequate employment and rigid supervision are provided.
6. Adequate appropriations must be provided for obtaining requisite data and furnishing necessary supervision.
7. One parole officer should not be expected to supervise more than a number to whom he can give adequate attention.
8. No political or other improper influence shall be tolerated.
9. Machinery should be provided for the prompt revocation of any parole when continuance at liberty is not in the public interest.

VII

That the Attorney General's Conference on Crime believes that the time is ripe for securing a substantial improvement in criminal procedure, and it therefore recommends to all legislatures which are meeting in 1935, a careful consideration of procedural recommendations, and particularly of the model Code of Criminal Procedure prepared by the American Law Institute and approved by the American Bar Association and the Association of American Law Schools.

Specifically, it recommends the following provisions:

1. Giving the accused the privilege of electing whether he shall be tried by jury or the court alone.
2. Permitting the empanelling of alternate or extra jurors to serve in the case of the disability or disqualification of any juror during trial.
3. Permitting trial upon information as well as indictment. Where indictment by grand jury remains a constitutional requirement, waiver should be allowed.
4. Providing for jury verdicts in criminal cases by less than a unanimous vote except in the case of certain major felonies.
5. Adopting a principle that a criminal defendant offering a claim of alibi or insanity in his defense shall be required to give advance notice to the prosecution of this fact and of the circumstances to be offered, and that in the absence of such notice, a plea of insanity or a defense based on an alibi shall not be permitted upon trial except in extraordinary cases in the discretion of the judge.
6. Adopting a rule permitting court and counsel to comment to the jury on the failure of the defendant in a criminal case to testify in his own behalf.

And it further recommends that committees on criminal law and its enforcement be appointed in every legislature for the consideration of these and other measures designed to improve criminal justice and that the American Legislators' Association cooperate with these committees.

VIII

That the Conference deplores the practice of unduly dramatizing stories of crime and glorifying the criminal. It commends the activities of those newspapers and periodicals which have rendered substantial aid in the identification of wanted criminals and have otherwise aided in supporting the law enforcing authorities.

IX

That the Conference specifically condemns (1) the unsafe, unsanitary and insecure conditions which exist in many local jails throughout the country; (2) the possession of firearms by irresponsible persons and known criminals; (3) the activities of lawyer criminals; (4) the protection which is too often given to professional criminals and racketeers by persons in professional, business, political and official positions; (5) the generally prevalent abuse of bail; and (6) similar generally recognized evils in criminal law administration; and recommends the reference of the same to the permanent organization which may be set up to perpetuate the work of this Conference for the purpose of studying and recommending remedial action relating thereto.

The 110 resolutions received by the Conference contain some further valuable suggestions for improvement. We recommend that all of these be given careful study by the permanent organization referred to above.

Governmental Activity and the Young Lawyer

Whatever may be thought of the recent increase of governmental activity from the political, constitutional or economic standpoint, it seems to be offering immediate opportunities to the well-trained graduates of the leading law schools, according to the annual report of Dean Charles E. Clark, of the School of Law of Yale University.

"The demand for recent graduates from leading schools of law," says Dean Clark, "which receded comparatively little during the depression as compared to the almost total standstill in other occupations, is . . . now somewhat in a stage of boom. The Federal Government is employing many law graduates, and the increase of governmental activities in the regulation of industry has led to a greater need of law clerks in the large law firms. Older members of the profession, it is true, have suffered a substantial diminution of income in common with all, due largely, however, to inability to collect for services performed rather than for lack of activity, but the youthful law clerk has fared quite well in both salary and experience. The facts that the School of Law has been so definitely committed to a program of broad and diverse training in law and that its prestige is now at its highest have increased the placement possibilities before our graduates . . ."

THE FEDERAL CHILD LABOR AMENDMENT

By

The Special Committee of the American Bar Association

Foreword

THIS statement by the Special Committee of the Association appointed to oppose the so-called Child Labor Amendment is worthy of the careful consideration of every member.

In the first place, it makes the position of the American Bar Association plain. The Association is opposing the proposed Amendment but it is in no sense opposed to effectively protecting and regulating employment of children. On the contrary, the American Bar Association has continuously for several years been urging the adoption of a uniform Child Labor act containing such regulations as may reasonably be dealt with by uniform provisions. This act was drafted by the National Conference of Commissioners on Uniform State Laws, which is closely affiliated with the American Bar Association. But the Association holds that this matter is peculiarly the business of the States; that the majority of them have already dealt efficiently with the problem; that the others, with a few exceptions, have made advances in the right direction; and that a State's solution of its problem which will take into consideration local conditions will unquestionably be more satisfactory and workable than a general uniform plan imposed by a central bureau.

Under the uniform act referred to, the administration and enforcement of the law for the protection of children are vested in the States, where they properly belong both from a constitutional and practical standpoint, and "not in any centralized federal bureaucracy functioning in and from Washington."

The statement further makes clear the true meaning of this proposed Amendment. It is doubtful if many citizens realize the vast inquisitorial and regulatory power over the lives of children, far beyond their employment for hire in industrialized and commercialized concerns, which it attempts to confer on Congress. The legislative history of the measure, as here set forth, is deeply significant. Even many who favor a child labor amendment will draw back from the tremendous possibilities for governmental control involved in this proposed amendment. And many who do not agree with the Committee's construction will doubtless agree that in a vital matter like this the terms should be made so clear that different constructions are not possible.

I believe that the Committee has discharged a patriotic duty in an able way and it is my hope that the members of the Association will aid in bringing this statement to the attention of the legislators in those States in which an effort for ratification is likely to be made in 1935.

SCOTT M. LOFTIN, *President.*

IN PURSUANCE of a resolution adopted by the Executive Committee of the American Bar Association and approved at the 1934 annual meeting,[1] the President of the Association has appointed the undersigned a special committee to oppose on its behalf the ratification of the so-called Child Labor Amendment to the Constitution of the United States proposed by Congress on June 2, 1924. This action of the Association was in accord with and supplemental to a prior resolution adopted by the Executive Committee and ratified by the Association at the annual meeting in 1933, which declared that "the proposed Child Labor Amendment to the Constitution of the United States should be actively opposed as an unwarranted invasion by the Federal Government of a field in which the rights of the individual States and of the family are and should remain paramount."[2] The special committee has accordingly studied the questions of constitutional law and practice thus presented for their consideration, and it has prepared the following review of the history of the proposed amendment, its purpose and intent, and its construction and effect.

History of proposed Child Labor Amendment

The Federal Child Labor Amendment was proposed by Congress to the legislatures of the several States on June 2, 1924, in pursuance of Article V of the Constitution of the United States, which authorizes Congress to propose amendments "whenever two-thirds of both Houses shall deem it necessary," and which regulates the procedure for the ratification of any such amendment by three-fourths of the States. The primary inquiry is whether, after the lapse of more than ten years and six months since its proposal by Congress to the state legislatures, this proposed amendment can be held to be still pending for ratification, and also whether a state legislature may, after an interval of many years, now withdraw or cancel a due rejection by a prior legislature, and thereupon validly ratify the amendment.

Twenty-one articles of amendment to the Constitution of the United States have so far been ratified, and in each instance the ratification has been within a reasonable time after the proposal. The shortest period was nine months and thirteen days in the case of the Twelfth Amendment. The longest period yet taken for ratification was three years, six months and five days in the case of the Sixteenth or Income Tax Amendment, which was proposed July 31, 1909, and declared ratified as of February 5, 1913.

As stated above, the Child Labor Amendment was proposed by Congress on June 2, 1924. It was ratified that year by two States and rejected by one State; it was rejected in 1925 by thirty-two States and ratified by three; in 1926 it was rejected by two States and ratified by none; in 1927 it was rejected by one State and ratified by one; in 1928, 1929 and 1930 there were

1. American Bar Association Journal, October, 1934, p. 604.
2. Annual report, 1933, vol. 58, p. 319. See also address of President Martin at p. 236, and Journal, October, 1933, p. 819, 551-3.

no rejections or ratifications; in 1931 it was ratified by one State and rejected by none, and in 1932 there were no rejections or ratifications. By the end of February, 1925, that is, within nine months after the amendment had been proposed by Congress, it had been rejected by both branches of the legislature in thirteen States, in other words, by one more than one-fourth of the forty-eight States, thus preventing ratification by the three-fourths as required by Article V, and, in addition, one house or branch of the legislature in nine States had refused to ratify or had affirmatively voted to reject the amendment. Furthermore, by the end of April, 1925, that is, within eleven months after the submission of the proposal by Congress to the state legislatures, the amendment had been rejected by both branches of the legislature in twenty-three States and by one branch in eleven additional States, and fifteen of the legislatures so rejecting by vote of both branches had certified accordingly to the Secretary of State of the United States. Upon the expiration on June 1, 1931, of seven years after the proposal by Congress, the amendment had been ratified by only six legislatures and rejected in thirty-eight States by one or both branches of the legislature.

When the Eighteenth Amendment was proposed on December 19, 1917, Congress for the first time placed a time limit in a proposed amendment, namely, seven years, as the reasonable time within which, in its judgment, it should be ratified. The Nineteenth or Woman Suffrage Amendment, proposed June 5, 1919, contained no time limit, but it was ratified by August 26, 1920, that is, within one year, two months and twenty-one days. While the Child Labor Amendment was pending before Congress in 1924, a motion was made to insert a time limit, but this was opposed and defeated by its proponents. In proposing the Twentieth or Lame Duck Amendment on March 3, 1932, as well as the Twenty-first or Prohibition Repeal Amendment on February 20, 1933, Congress followed the precedent it had established in 1917, and again in each instance fixed seven years as the time within which the proposed amendment must be ratified.

There is not only this practical interpretation and declaration by Congress that seven years is a reasonable time within which a proposed amendment to the Constitution of the United States should be ratified, but the unanimous decision of the Supreme Court in *Dillon* v. *Gloss* (1921), 256 U. S. 368, upholding such a limit of time as appropriate and reasonable. Thus, speaking for the entire court in that case, Mr. Justice Van Devanter used the following language at pages 374-5:

"We do not find anything in the Article [V] which suggests that an amendment once proposed is to be open to ratification for all time, or that ratification in some of the States may be separated from that in others by many years and yet be effective. We do find that which strongly suggests the contrary. First, proposal and ratification are not treated as unrelated acts but as succeeding steps in a single endeavor, the natural inference being that they are not to be widely separated in time. Secondly, it is only when there is deemed to be a necessity therefor that amendments are to be proposed, the reasonable implication being that when proposed they are to be considered and disposed of presently. Thirdly, as ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the States, there is a fair implication that it must be sufficiently contemporaneous in that number of States to reflect the will of the people in all sections at relatively the same period, which of course ratification scattered through a long series of years would not do. These considerations and the general purport and spirit of the Article lead to the conclusion expressed by Judge Jameson[2a] 'that an alteration of the Constitution proposed today has relation to the sentiment and the felt needs of today, and that, if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by Congress.' That this is the better conclusion becomes even more manifest when what is comprehended in the other view is considered; for, according to it, four amendments proposed long ago—two in 1789, one in 1810 and one in 1861—are still pending and in a situation where their ratification in some of the States many years since by representatives of generations now largely forgotten may be effectively supplemented in enough more States to make three-fourths by representatives of the present or some future generation. To that view few would be able to subscribe, and in our opinion it is quite untenable. We conclude that the fair inference or implication from Article V is that the ratification must be within some reasonable time after the proposal."

2a. Jameson on Constitutional Conventions, 4th ed., §585.

However, in 1933, the Child Labor Amendment was attempted to be "resurrected and its ratification completed," to use the striking term employed in the opinion of the court by Mr. Justice Van Devanter in *Dillon* v. *Gloss,* at p. 373, and votes of ratification were obtained from fourteen state legislatures, of which twelve had years before duly rejected the amendment.

Ratification, however, was successfully opposed in 1933 in eleven States. In 1934, the amendment was re-introduced for ratification in eleven States, but it failed of ratification in each instance, either by affirmative rejection by both branches of the legislature, or by failure to pass in one or both branches. It is understood that it will be re-introduced by its proponents in twenty-odd state legislatures that have not ratified and that will convene in 1935.

It is the opinion of the undersigned special committee that, by January 2, 1933, that is, eight years and seven months after the amendment had been proposed by Congress to the state legislatures, more than a reasonable time had elapsed since June 2, 1924, and that after such a long interval it could not be resurrected and validly ratified by state legislatures "unless a second time proposed by Congress." The special committee is further of opinion that a state legislature which has duly rejected a proposed amendment, and particularly so when it has duly certified such action of rejection to the Secretary of State of the United States, cannot, after the expiration of nine or more years and due rejection meanwhile by the legislatures of more than one-fourth of the States, validly annul, withdraw, or revoke its prior rejection.

The practice followed in 1866-1868 in the case of the Fourteenth Amendment does not furnish a precedent supporting the contention now advanced that a state legislature may, after the lapse of nine years or more, withdraw its prior due rejection of an amendment and thereupon validly ratify it, even if the reasoning that "in legal effect, there is no difference between rejection and failure to act at all," be not challenged as illogical and unsound. This reasoning is stated by John Mabry Mathews in a work published in 1932 under the title "The American Constitutional System," at page 39. The author, however, prefaced his quoted remarks by the qualification "if made within a reasonable time." Every reversal of action in the case of the Fourteenth Amendment was made within a reasonable time, the longest being within two years, one month and five days after the date of proposal by Congress. In the opinion of the special committee, an interval of eight and a half or more years is not a reasonable time, and it is not warranted or supported by any precedent.

It may be added that, in the judgment of the undersigned special committee, the preferable course

in 1933 or 1934, in view of the long interval since June 2, 1924, would have been to apply to Congress in order that, if Congress should then still "deem it necessary," notwithstanding its rejection meanwhile by one or both branches of forty state legislatures, the amendment might be "a second time proposed by Congress," which, as we have seen, was declared by the Supreme Court in *Dillon* v. *Gloss* to be manifestly "the better conclusion." Moreover, had application been made to Congress in 1933 or 1934, the language of the amendment could have been modified so as to make it conform to the limited intent and purpose now professed by the Secretary of Agriculture and the Secretary of Labor and other advocates of ratification to be its true intent, construction and effect, although even then there would remain the fundamental objection and challenge that under our present federal constitutional system "the power to limit, regulate, and prohibit the labor of persons under eighteen years of age" should remain, as it has always been, vested in the several States in accord with the intention of the Tenth Amendment and of the Founders, and not taken over by the Federal Government functioning, necessarily and inevitably, through a bureaucracy centered in Washington.

Impairment and undermining of federal principle

When the Child Labor Amendment was proposed by Congress and was before the state legislatures for ratification or rejection in 1924 and 1925, the subject received the fullest consideration and every aspect was discussed.[3] It was emphasized that it would give Congress more power over the "labor of persons under eighteen years of age" than was then being exercised by any State, and would in that respect substitute centralized federal government for local self-government. Many lawyers and legislators were convinced and urged that its inevitable effect, if ever ratified by the necessary thirty-six state legislatures, would be to undermine, in a broad field of governmental activity and responsibility, the integrity and virtue of our federal system of constitutional government and impair the separate and independent character of the several States and their right to exercise their sovereignty and to enjoy local self-government free of control and dictation from Washington.[4] Such convictions then generally entertained are undoubtedly the reason why the amendment was so promptly and overwhelmingly rejected in 1924 and 1925 when public opinion was fully advised as to its intended scope and effect and the then true purpose and intent of its proponents, which purpose and intent were not at all as limited as the advocates of ratification now profess.

In discussing the merits and virtues of the federal system established by the Constitution of the United States, Lord Bryce, in his classic "American Commonwealth," declared that Federalism in the United States supplies a better means of developing and governing the country than could be expected under any centralized government, "that it prevents the rise of a despotic central government, absorbing other powers, and menacing the private liberties of the citizen," and that "the more power is given to the units [*i. e.*, the States] which compose the nation, be they large or small, and the less to the nation as a whole and to its central authority, so much the fuller will be the liberties and so much greater the energy of the individuals who compose the people." Washington in his Farewell Address admonished us that we should "resist the spirit of innovation upon its principles, however specious the pretexts" and that alterations may "impair the energy of the system and thus undermine what cannot be directly overthrown." And Chief Justice Marshall declared in *McCulloch* v. *Maryland*, 4 Wheaton 316, 403, that "no political dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass."

When condemning the antecedent Child Labor Acts of Congress of 1916 and 1919 as unconstitutional, the Supreme Court used language equally applicable to the present proposed Child Labor Amendment. Thus, as to the Act of 1916, the court in *Hammer* v. *Dagenhart*, 247 U. S. 251, 275, said:

> "The maintenance of the authority of the States over matters purely local is as essential to the preservation of our institutions as is the conservation of the supremacy of the federal power . . ."

And with regard to the Act of 1919, Mr. Chief Justice Taft, speaking for the court in the *Child Labor Tax Case*, 259 U. S. 20, 37, among other things, said:

> "The good sought in unconstitutional legislation is an insidious feature because it leads citizens and legislators of good purpose to promote it without thought of the serious breach it will make in the ark of our covenant or the harm which will come from breaking down recognized standards. In the maintenance of local self-government, on the one hand, and the national power, on the other, our country has been able to endure and prosper for near a century and a half."

Existing State Legislation

Every State now has a Child Labor Law for the protection and safeguarding of its children and youths, adapted, it is fair and reasonable to assume, to local conditions, wants and needs and to the differences of climate, resources, industries, production and other conditions existing among the several States. A number of the States have no mines, some little or no manufactories, some no slums, many no such congestion, poverty and misery as are to be found in or about the great cities and congested areas. About forty States prohibit and forty-odd regulate the employment of persons under sixteen in dangerous occupations, and every State but one prohibits children under fourteen from being employed in factories. That one State is Wyoming, but it does not permit children to work during school hours, and it is essentially an agricultural and not a mining or manufacturing State. Thirty-six States limit the industrial work of children to eight hours a day. All but four States prohibit night work in industrial employments for those under sixteen.

Every State now has a compulsory education law, usually for the entire school session for those up to fourteen years of age; and in forty-one States the requirement is sixteen years of age, with certain exemptions after fourteen and fifteen years of age. About forty States require an educational or school minimum before a child may begin to work for hire, and twenty-six require a physician to pass on a child's fitness for work. In fact, the progress of the States towards safeguarding the welfare of children has been steadily pro-

3. See review by F. W. Grinnell of Massachusetts Bar, published in March, 1925, number of Journal of Association (vol. 11, p. 192); article in Virginia Law Review, November, 1924, by Bentley W. Warren, of the Boston Bar; Reconstruction and Constitution by John W. Burgess (1902), p. 205; Cooley's Constitutional Law (1931), p. 46; Watson on the Constitution (1910), pp. 1313-1318; Willoughby on the Constitution (1929) at p. 593; Georgetown Law Journal, March, 1934, p. 560.

4. "Dangers in disregarding fundamental conceptions when amending the Federal Constitution," by Chief Justice Von Moschzisker of Pennsylvania in The Cornell Law Quarterly, December, 1925; "The Child Labor Amendment," by Thomas J. Norton, author of "The Constitution of the United States; its sources and its application," and "Centralizing Power," by Mr. Justice Frank Johnston, Jr., of Illinois, published in "The Chicago Daily News," serially in January, 1925.

gressive and highly encouraging during the past twenty years, as anyone can readily verify by examining the laws of the several States and the Federal Census of 1910, 1920 and 1930. The reprint of chapter 6 of volume V of the Fifteenth Census Reports on Population and "Children in Gainful Occupation, Fourteenth Census" (U. S. Government Printing Office, Washington D. C., 1933) contains the following statements:

"Decrease from 1920 to 1930 in children occupied. From 1920 to 1930 there was a marked and general decrease in the number and in the proportion of children returned as gainfully occupied—both of children 10 to 15 years old and of those 10 to 17 years old.

"Notwithstanding an increase of 14.4 per cent in the number of children 10-15 years old in the United States between 1920 and 1930, the number of such children gainfully occupied decreased 37.1 per cent during the decade and the proportion of them gainfully occupied dropped from 8.5 to 4.7 per cent. The decrease in the proportion of boys and of girls 10 to 15 years old gainfully occupied extended to each geographic division and to each State.

"For each sex the decrease from 1920 to 1930 in the number of children 10 to 15 years old gainfully occupied was general throughout the occupational field."

The American Bar Association has for several years been urging the adoption of a Uniform Child Labor Act containing such regulations as may be reasonably dealt with by uniform provisions; but the Commissioners on Uniform State Laws who drafted this Act, it is understood, recognized that the administration or enforcement of any such law for the protection and safeguarding of children should be vested in the States and not in any centralized federal bureaucracy functioning in and from Washington. It is submitted that the several States, with their varying climatic, racial and economic conditions, resources, needs and customs, can administer a child labor law in accord with their several local conditions, necessities and resources far more effectively, more reliably and more sympathetically and humanely than would be likely by non-resident officials, or any federal bureaucracy centralized in Washington in the Labor or any other Federal department.

True intent and purpose of proposed Child Labor Amendment

The intent and purpose of the framers of the proposed Federal Child Labor Amendment in 1924 were indisputably to centralize and vest in Congress unlimited and supreme power over the labor of all persons under eighteen years of age throughout the United States. Indeed, no language could have been employed that would have more fully or more completely vested this unlimited power. The proponents of the amendment at that time rejected every limitation proposed. The Congressional Record so demonstrates. No such reasonable and limited purpose as is now being represented by the advocates of ratification was avowed or professed in 1924, but quite the contrary was insisted upon.

The text of the proposed amendment is as follows:

"SECTION 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age.

"SEC. 2. The power of the several States is unimpaired by this article except that the operation of state laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress."

The intent, purpose and construction of an amendment to the Constitution of the United States must be determined by its language if plain and unambiguous, as evidencing the intent and purpose of its framers when proposed to the state legislatures for ratification or rejection, and not by some different, limited, or restricted intent and meaning professed by advocates of ratification years afterwards. Hence, the controlling factor in considering the proposed Federal Child Labor Amendment is not what moderation, reasonableness, or restraint is now intended or professed or promised, but what was within the intention and meaning of its framers in June, 1924, what was being pressed upon the attention of Congress at the time the amendment was being considered by its members, and the purport of the language finally employed. The rule had been long settled that, when the language of a constitutional provision is plain and unambiguous, it controls and determines its legal intent and effect, and that there is then no room for conjecture, or, stated in other words, that it must be held to mean and intend what it plainly says. It had further long been the settled rule that any general power expressly vested in Congress by the Constitution is complete in itself, that it "may be exercised to its utmost extent," and does "not depend on the degree to which it may be exercised," that it "acknowledges no limitations, other than are prescribed in the Constitution," and that "if it may be exercised at all, it must be exercised at the will of those in whose hands it is placed."[5]

Reference to the Congressional Record will convincingly show the far-reaching intent and purpose of the framers of the proposed amendment, and will render quite indisputable that such intent and purpose were not at all as limited as is now professed by the advocates of ratification.

The proposed amendment has no title, and it does not contain the word "child" or the word "children." The word "children" was originally contained in the proposed amendment, and one might reasonably suppose that the term would be quite essential in any alleged child labor amendment. However, the framers were advised by counsel that the "term 'child' had been held to mean persons" under 14 years of age. The word "persons" was, therefore, substituted because much broader and more comprehensive.

The word "prohibit" was not at first proposed, but was added undoubtedly in order to obviate an assumed limitation upon the meaning of the words "limit" and "regulate," namely, that a limitation or regulation must be appropriate.[6] The proponents of the amendment were being advised by distinguished lawyers and professors of law, and, therefore, the particular significance of any changes made, such as the addition of the word "prohibit," cannot be disregarded. These lawyers must have been familiar with the decisions of the Supreme Court of the United States. They probably advised that, if it were intended to seek power, not only to "limit" and "regulate" but to go further and absolutely "prohibit" the labor of persons under eighteen years of age without qualification or limitation of any kind, the express power to "prohibit" ought to be added. They must have had in mind the settled doctrine that every word in the Constitution of the United States must be given effect, and that no word can be treated as unmeaning or mere surplusage, and hence that "prohibit," so used, would imply and

5. *Martin* v. *Hunter's Lessee*, 1 Wheaton 304, 326; *McCulloch* v. *Maryland*, 4 Wheat., 316, 402, 423; *Dartmouth College* v. *Woodward*, 4 Wheat., 418, 644; *Gibbons* v. *Ogden*, 9 Wheat., 1, 196; *Brown* v. *Maryland*, 12 Wheat., 419, 439; *Everard's Breweries* v. *Day*, 265 U. S. 545, 558. See also *Veazie Bank* v. *Fenno*, 8 Wall. 533; *The Lottery Case*, 188 U. S. 321; *McCray* v. *United States*, 195 U. S. 27; *Commetti* v. *United States*, 242 U. S. 470; *Wilson* v. *New*, 243 U. S. 332.

6. U. S. Constitution, Article I, Section VIII, subdiv. 18, as construed in *McCulloch* v. *Maryland*, 4 Wheat. 316, 413.

mean more than "limit" or "regulate." (Cong. Rec. vol. 65, p. 7181).

It was originally intended to grant to Congress the power to limit and regulate "the employment of children," following in this respect the two Acts of Congress of 1916 and 1919 which had been declared unconstitutional and void by the Supreme Court (*supra*), both of which statutes had used the phrase generally to be found in state child labor statutes, that is, "employed or permitted to work." The Congressional Record shows that the promoters of the proposed amendment had the word "labor" substituted because they were advised that the word "employment" might be construed to imply "hired for pay" within the currently accepted meaning that, when a person is said to be employed, it implies work or service for another and generally for pay. As, however, it was the intention of the framers of the proposed amendment to reach right into the home and home farm, where children, as the Chief of the Children's Bureau in the Labor Department testified, "often work with their parents without pay and hence are not on the payroll," they objected to the word "employment" as too restrictive. This was testified by Miss Abbott, the Chief of the Children's Bureau of the Labor Department, as the Congressional Record shows. See Senate Report on Child Labor Amendment, p. 39. The word "employment" was, therefore, discarded, and the broader term "labor" substituted. This substitution was thus made in order to cover beyond possible question the work of children and youths for their parents in the home and on the home farm. The Chief of the Children's Bureau further testified that the general authority they were seeking would include "power to regulate labor upon the farms and in agriculture," and she added emphatically "just as much regulatory power as to farming as mines or any other work or occupation," and "would make no exception at all." See Report of House hearings, p. 36.

The minority report of the Judiciary Committee of the House presented on March 29, 1924, by its chairman, Mr. Graham, of Pennsylvania, a distinguished lawyer, stated as follows with regard to the then understanding of the intent and purport of the proposed amendment:[7]

"It is possible to pass a law prohibiting the labor of all minors under 18 years of age. If so, the States would have no jurisdiction whatever left upon that subject. The New England farmer's boy could not pick blueberries on the hills; the city schoolboy could not sell papers after school; the country boy, white or black, could not work in the cotton, wheat, or hay fields of the South or West; the college student even, if under 18, could not work to pay his way through college.

"It will not do to say that Congress would not pass such a drastic law. Perhaps it might not. We should not forget, however, that the sixteenth—the income tax—amendment was adopted upon the supposedly unanswerable ground that without it the Nation in case of war or other public emergency would be without adequate means of raising revenue. Yet it was hardly ratified before Congress levied an income tax, and at a time when the country was at peace with the whole world. Almost before the eighteenth amendment took effect the extreme Volstead law was enacted, which is so extreme that in the opinion of many thoughtful citizens its severity is responsible for the unsatisfactory enforcement of prohibition."

Representative Ramseyer of Iowa, who voted for the amendment, among other explanations in the House on April 26, 1924, stated as follows:[8]

"Mark right here, too, it does not say the 'employment' of persons under 18 years of age, but the 'labor of persons under 18 years of age.' . . . A boy who is sent by his father to milk the cows, labors. Under the proposed amendment Congress will have power to regulate the labor of a boy under the direction of his father as well as the employment of the same boy when he works for a neighbor or stranger. . . . Congress will have the power to 'limit, regulate, and prohibit' the labor of girls under 18 years of age in the home and of boys under 18 years of age on the farms. Gentlemen admit that the effect of the proposed amendment is just as I stated it."

And Representative Crisp, of Georgia, then said:[9]

"This amendment does not limit or confine the power of Congress to legislate with respect to the work of persons under 18 in mines, factories, sweatshops, and other places injurious to moral or physical welfare, but it goes further—it is as wide open as the heavens—and provides authority to say they cannot work in the fields, stores or in other wholesome and healthful occupations. Aye it goes even further; it confers upon Congress the power to say that a girl under 18 cannot assist her own mother in doing the housework, cooking or dishwashing in her own home, and that a son of like age cannot help his father to work on a farm."

In the Senate on May 31, 1924, Senator King of Utah said:[10]

"Of course, it is obvious that under the guise of the amendment they will in time take charge of children the same as the Bolsheviks are doing in Russia, and control not only their labor and their education, but after a time determine whether they shall receive religious instruction or not, the same as the Bolsheviks do in Russia. It is a scheme to destroy the State, our form of government, and to introduce the worst forms of communism into American institutions." . . ."

These quotations are but a few of the many similar items of evidence to be found in the Congressional Record and committee reports as to the understanding of Congress in 1924, and presumably the intent and purport of the proposed amendment.

Yet, ten years afterwards, the Secretary of Labor, Miss Perkins, and the Secretary of Agriculture, Mr. Wallace, are publicly asserting the direct contrary as to what Congress understood and intended in 1924. Thus, in an article by the Secretary of Labor published in the "New York Times" on January 28, 1934, she quoted with approval and gave currency to the following plainly erroneous statement:

"The amendment gives Congress power only over the labor of children for hire, and nothing else. It would not give Congress power to send inspectors any place except where work for hire was being carried on, and therefore Congress would have absolutely no power to send inspectors into families, schools or churches any more than it has now."

And equally erroneous, if not equally misleading, was the following statement made by the Secretary of Agriculture and also given wide publicity:

"Coming from an agricultural state I am familiar with the attempts of opponents of the Amendment to arouse farmers against it on the ground that farm boys and girls would no longer be permitted to help with the chores and that the parents' authority over their children would be seriously impaired. Of course this is nonsense and every fair-minded person who knows anything at all about the proposed Amendment knows that it is nonsense. The Amendment is directed at protecting children from industrialized and commercialized employment which endangers their health and interferes with their schooling. Farm chores done outside of school hours and suited to the age and physical capacity of the youngsters certainly do not come under the heading of industrialized and commercialized employment."

It is quite true that children so engaged do not come under the heading of "industrialized and commercialized employment"; but the Secretary apparently was entirely ignorant of the fact that the proposed Child Labor Amendment was not at all intended to be limited to "industrialized and commercialized employment," and that no such "heading" or limitation or

7. Report No. 395, part 2, p. 8.
8. Cong. Rec., vol. 65, p. 7290.
9. Cong. Rec., vol. 65, p. 7174.
10. Cong. Rec., vol. 65, p. 10007.

qualification is expressed therein or can be implied therefrom.

The sincerity and good faith of these two members of the Cabinet, and of the other advocates of ratification who are making similar statements, need not be challenged, because it is assumed that they must, of course, be unaware of the understanding and intention of Congress in 1924 and of the settled rules of constitutional interpretation. It must, however, be a source of regret that they have not seen fit to consult the Congressional Record before undertaking publicly to discuss the purpose, intent and meaning of an amendment to the Constitution of the United States proposed by Congress. Had they done so, it is reasonable and proper to believe that they would in candor probably be convinced that the intention and understanding in 1924 of the Congress that proposed the amendment were not at all as limited as they are now representing. They are, it is true, liberal in professions and assurances of moderation, restraint and reasonableness, and of absence of any present purpose or intent to urge Congress to exercise all the legislative power that the amendment would vest in it. But how can anyone give assurances as to what Congress will or will not do? The Secretary of Labor has declared that she thinks that "it is inconceivable that Congress should ever pass such legislation, for no one wants to prohibit all work for children under 18." That being so, why is she urging that such a power be granted to Congress when no one wants ever to have it exercised and when no state legislature has ever exercised it? Criticizing this statement of Miss Perkins, the "Hartford Daily Courant," in a leading editorial published April 24, 1934, justly said:

"If nobody wants to do that, then the amendment should have been so drawn as to make it impossible. Experience has abundantly proved that sooner or later every legislative body avails itself of every last vestige of power that it possesses. It may start out moderately enough, but there are always those who think the pace too slow and insist on going farther and faster. They organize themselves under some high-sounding title that gives the impression they are working for noble humanitarian ends, and often succeed in exerting sufficient pressure upon the law-making body to gain ulterior objectives."

If the proposed amendment be ratified, there will have to be an enormous increase in the personnel of the Labor and Agricultural Departments, the former having in 1933[11] a personnel of 5,330, and the latter in 1934 having a personnel of 40,857. As ex-Governor Smith of New York well said in The New Outlook for March, 1934, in opposing ratification of the Child Labor Amendment: "Is it conceivable that federal control can be exercised otherwise than through a new army of inspectors, investigators, sleuths, bloodhounds and statisticians traveling about in trains, automobiles and on horseback, stopping at hotels, and bedeviling the work of [state] labor departments?"

It was urged upon the New York Legislature in April, 1934, by some of the advocates of ratification, "that the diversity of state legislation [*i. e.*, as to child labor] had resulted in inequitable conditions and unfair competition for industry." All concern as to safeguarding the health, morals, or welfare of children for the time being became apparently quite secondary, and the admission made that the Constitution of the United States was being sought to be radically amended in order to equalize labor conditions and competition of all persons under eighteen years of age throughout the entire United States. Obviously, the very same reasoning, if sound, would support an amendment providing that the labor of adults should likewise be "limited, regulated, and prohibited" by Congress in order to set aside state legislation which it was conceived "has resulted in inequitable conditions and unfair competition." The attitude of the American Federation of Labor is shown by the appeal recently issued by President Green urging the labor organizations to support ratification. See also House Document No. 551 (1928), pp. 135-6, and the "American Federationist," for September, 1934, at pp. 949-958.

The definition and scope of the word "labor"

Notwithstanding the broad intent and purpose of the framers of the Child Labor Amendment as clearly and convincingly disclosed in the Congressional Record, it is nevertheless now being urged by advocates of ratification that the "power to limit, regulate, and prohibit the labor of persons under eighteen years of age," as expressed in the proposed amendment, would not and could not sensibly or reasonably be construed to vest in Congress any power over "the work of children for their parents at household tasks or in assisting on the farm"; and it is further being argued that as no State has ever attempted to control such home work "this alone is a complete answer to the charge that Congress would attempt regulation of that kind."[12] In other words, the argument is now being advanced that because no State has ever deemed it necessary or advisable to exercise the power to prohibit the labor of persons under eighteen years of age in the home or on the home farm, therefore we can safely and wisely grant to Congress the power to do so, on the assumption that it will never be exercised notwithstanding the indisputable insistence in 1924 that that very power should be conferred. In support of this proposition, which entirely disregards the avowed understanding, intent and purpose of the framers of the amendment and the intention of Congress in 1924, the argument is that the word "labor" in the amendment must receive a "sensible construction" and not one which will lead to an "absurd consequence," in the face of the indisputable fact that what is now urged to be "nonsense" and an "absurd consequence" and not a "sensible construction" was the avowed and deliberate purpose and insistence of the framers of the amendment and of those pressing the amendment on Congress in 1924, as the Congressional Record clearly shows.

The decisions in *Holy Trinity Church* v. *United States*, 143 U S. 457, and *Maxwell* v. *Dow*, 176 U. S. 581, 602, are, for example, being cited in support of the contention that the word "labor" will be held to have such a limited and restricted meaning as is now suggested. A study of these two cases, particularly in the light of subsequent decisions, will show that they do not support the proposition that the force and effect of an amendment of the Constitution of the United States in plain and unambiguous language can be limited by any such theories as are now advanced. Indeed, the very case they cite of *Maxwell* v. *Dow*, 176 U. S. 581, sufficiently refutes the contention of the advocates of ratification. Thus, speaking of a constitutional amendment, the court then said (at p. 602):

"The safe way is to read its language in connection with the known condition of affairs out of which the occasion for its adoption may have arisen, and then to construe it, if there be therein any doubtful expressions, in a way so far as is reasonably possible, to forward the known purpose or object for which the amendment was adopted. This rule could not, of course, be so used as to limit the force and effect of an

11. Figures for 1934 were refused on ground that they had not yet been officially published.

12. November number A. B. A. Journal at p. 781.

amendment in a manner which the plain and unambiguous language used therein would not justify or permit."

And even in the *Holy Trinity Church* case, which is principally relied on, the opinion clearly shows (at p. 463) that if the labor of rectors or ministers or rabbis had been "pressed upon the attention of the legislative body" and there was evidence of an intention or purpose to exclude them, a different conclusion would necessarily have been reached "without regard to the consequences." This is quite evident from the later cases, such, *e. g.*, as *Treat* v. *White,* 181 U. S. 264, 267; *Commissioner of Immigration* v. *Gottlieb,* 265 U. S. 310, 313, and *Crooks* v. *Harrelson,* 282 U. S. 55, 60. See also the more recent opinion of the Circuit Court of Appeals, Eighth Circuit, in *Echols* v. *Commissioner of Internal Revenue,* 61 Fed. (2d) 191, 194, which concludes with the remark: "Why should a court say that Congress intended something different from what the plain meaning of the words shows its intention to be, even if the same result in some hardship or absurdity?"

Another argument is that because the word "laborer" in popular meaning and current use is generally limited, it follows that the word "labor" must be held to have been used with a like limited meaning, so as not to include or cover "labor" in the home or on the home farm. Of course, the word "labor" does not have or imply any such limited or restricted meaning as "laborer," which will readily be evident if reference be made to the dictionaries and law reports. The decisive fact, moreover, is that there is not the slightest evidence, whether from the context or otherwise, that Congress used the word "labor" in any limited or restrictive intent or sense, but that the contrary is readily demonstrable by reference to the Congressional Record.

Furthermore, not only was it understood and "pressed" upon Congress that the amendment would and should confer power over the "labor of persons under eighteen years of age" in the home and on the home farm, as we have seen above, but the following qualifications or limitations of the scope of the amendment were opposed and rejected (68 Cong. Rec., 1st Sess., pp. 7292-3), viz.:

(1) "Provided that no law shall control the labor of any child in the house or business or on the premises connected therewith of the parent or parents."

(2) "But no law enacted under this article shall affect in any way the labor of any child or children on the farm of the parent or parents."

(3) "SECTION 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under 16 years of age, but not the labor of such persons in the homes and on the farms where they reside."[13]

It is further urged that the proposed Child Labor Amendment is different in form from the Eighteenth Amendment; but this difference seems only to intensify its objectionable character. The amendment now proposed would constitute an unlimited grant of power in general terms, whilst the Eighteenth Amendment was expressly limited to the prohibition of "intoxicating liquors for beverage purposes," and purported to grant to Congress only a concurrent power of enforcement of the prohibition. Nevertheless, these plain limitations upon the grant of power to Congress were in fact practically nullified by Congress and all limitations disregarded by it, and the Supreme Court could not give any relief or exercise any restraint because, as it stated in one of the cases brought before it for relief, ". . . this would be to pass the line which circumscribes the judicial department and to tread upon legislative ground." *Everard's Breweries* v. *Day,* 265 U. S. 545, 559. See also *Lambert* v. *Yellowley,* 291 Fed. 640, 644; 272 U. S. 581, 604.

The plea that we can safely and unconcernedly transfer to Congress the unlimited "power to limit, regulate, and prohibit the labor of persons under eighteen years of age," grant it absolute control over the labor of children and youths in all the families of the United States, and place our trust and only reliance in the reasonableness and self-restraint of the present or future Congresses, or of the bureaucrats to whom the broadest powers and discretion as to enforcement might be delegated, ought surely to be sufficiently refuted by the example of the Volstead Act and its amendments, which fixed upon all the States a reign of oppression, and inquisitorial bureaucracy, and which ex-Governor Smith of New York characterized in The New Outlook for October, 1933, and March, 1934, respectively, as follows:

"It does not seem possible that the same States which are relieving us of the curse of the Eighteenth Amendment will now impose another constitutional curse upon us under the guise of abolishing child labor."

"We are told that Congress will never do anything extreme or undesirable under this amendment. That is just what the Wheelers and Cannons told us about the Eighteenth Amendment."

Some other arguments in support of ratification

It is further represented by advocates of ratification that the operation of the Acts of Congress of 1916 and 1919 "indicates the comparative simplicity and inexpensiveness of enforcing a Federal Child Labor Law," and the assertion is made that these Acts "gave general satisfaction while in force."[14] As matter of fact, however, as it ought readily to be recalled, these Acts of Congress were not economically or generally or efficiently administered, and the attempts to enforce them caused widespread dissatisfaction and resentment.

The Act of Congress of September 1, 1916, known as the first Federal Child Labor Act, by its terms did not become effective until September 1, 1917, and before that date and on August 9, 1917, it had been challenged in the courts on the ground that it was unconstitutional, as it had been challenged on that ground in both Houses of Congress before enactment. It was declared unconstitutional and void by the District Court of the United States for the Western District of North Carolina on August 31, 1917; in other words, before it ever became effective, and this decision was affirmed by the Supreme Court of the United States on June 3, 1918 (*Hammer* v. *Dagenhart,* 247 U. S. 251). The attempted enforcement of the Act by the Children's Bureau in the Department of Labor is plainly irrelevant and negligible and far from indicating or tending to prove economy, efficiency, or general satisfaction. Indeed, the Children's Bureau of the Labor Department apologetically declared in a public report that its work under the Act of 1916 "was hardly under way before the law was declared unconstitutional."

The second Federal Child Labor Act was embodied in the Revenue Act of February 24, 1919. It likewise from the beginning was generally recognized to be of very doubtful validity, and it also had been challenged in both Houses of Congress as unconstitu-

13. In the University of Pennsylvania Law Review for November, 1934, Mr. Ira Jewell Williams, of the Philadelphia Bar, among other interesting statements says: "Protests received scant and impatient attention, as the writer can personally certify, from appearances before the Judiciary Committee of the House."

14. Journal, November, 1934, p. 731.

tional. Litigation was promptly instituted to test its validity, and it was declared unconstitutional and void on December 10, 1921, in *Drexel Furniture Co.* v. *Bailey*, 276 Fed. 452, affirmed by the Supreme Court on May 15, 1922 (*Child Labor Tax Case*, 259 U. S. 20). Even the very limited operation by the Internal Revenue Department of this invalid, unpopular and oppressive child labor tax law pending litigation as to its validity involved a cost to the taxpayers of $307,703.

It is then urged that it is "unreasonable," or as some phrase it, is "nonsense"—"another absurdity"—"an absurd consequence," to apprehend that Congress would ever exercise the power to prohibit all labor of persons under eighteen years of age because no State has ever gone that far! It is, of course, true that no State in all our history has ever gone so far. Then, why was it deemed "necessary" to amend the Constitution of the United States so as to give to Congress a power so drastic and far-reaching and possibly so oppressive and inquisitorial that no State had ever exercised it, or found or deemed it necessary or proper to exercise it, and which it is now asserted no one desires to have exercised? Why were the reasonable and desirable limitations urged on Congress in 1924, as above quoted, not adopted?

Finally, in refutation of the Secretary of Labor's assertion that "no one wants to prohibit all work of children under 18," reference may be made to a bill pending in the House of Representatives, introduced on January 3, 1934 (H. R. 6184), by Representative Robert R. Rich, of Pennsylvania, in anticipation of what he believed would be the early ratification of the Child Labor Amendment and in order to make it immediately effective when it was ratified.

The bill so introduced in Congress on January 3, 1934, in anticipation of the assumed early ratification of the Child Labor Amendment, proposes to prohibit the employment of "any person under eighteen years of age" except only children of fourteen and under eighteen during "a school vacation period," and then only if a certificate be issued to them by the "superintendent of schools." Far-reaching inquisitorial and prying powers would be thereby vested in the Secretary of Labor and her "officers and employees." Employers would be terrorized and coerced by being made criminally liable to fine and imprisonment for any violation of the Act, or for any refusal to make any requested statement, or to permit examinations of their records. The Secretary of Labor would be given unlimited power to make "rules and regulations" and to appoint and fix the compensation of "such officers and employees as are necessary to carry out the provisions of this Act," and her duty would be to report annually "an account of investigations, determinations, civil actions, criminal prosecutions, and expenditures under this Act," and "there is authorized to be appropriated such sums as may be necessary for the purposes of this Act."

Conclusion

In conclusion, it may be affirmed that the Federal Child Labor Amendment proposed by Congress to the state legislatures on June 2, 1924, is no longer pending for ratification by the state legislatures, in view of the lapse of more than ten years and six months since it was proposed by Congress and of the opinion of the Supreme Court of the United States in the case of *Dillon* v. *Gloss*, 256 U. S. 368, 374. It is further affirmed that the vital and far-reaching question confronting the state legislatures on the merits, and their grave duty and responsibility, are to consider and determine whether or not they would be justified in ratifying an amendment which would grant such a new, unlimited and far-reaching power to Congress in curtailment and impairment of the present sovereignty and legislative powers of the States and their right to local self-government, a power which would reach into every home and menace every family, which might interfere with the sacred authority, control, and duty of parents, and which would practically be exercisable by Congress only through an innumerable bureaucracy centered in and directed from Washington. As we have seen above, it would constitute a power that "may be exercised to its utmost extent and at the will of those in whose hands it is placed," and it could readily be abused and become oppressive, inquisitorial, and demoralizing in its effect, and subject every household in every State to the prying and constant interference of federal investigators, detectives, truant officers, and snoopers.[15] The authority and rights of parents are now safeguarded alike against state or federal denial (*Meyer* v. *Nebraska*, 262 U. S. 390, 399; *Pierce* v. *Society of Sisters*, 268 U. S. 510, 535; *Farrington* v. *Tokushige* 273 U. S. 284, 299). If the proposed unprecedentedly broad power be granted to Congress "to limit, regulate, and prohibit the labor of persons under eighteen years of age" throughout the United States, who can assure or reasonably assume that such power would never be objectionably or oppressively exercised, or that any such legislation would be unconstitutional? The language of Chief Justice Marshall in *McCulloch* v. *Maryland*, 4 Wheaton 316, 402-423, should ever be borne in mind, viz.:

> "It would require no ordinary share of intrepidity to assert that a measure adopted under these circumstances was a bold and plain usurpation, to which the constitution gave no countenance. . . . But where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This court disclaims all pretentions to such a power."

Applying this long recognized principle to the Volstead Act under the Eighteenth Amendment in the case of *Everard's Breweries* v. *Day*, *supra*, 265 U. S. 545, 559, the court unanimously declared:

> "It is likewise well settled that where the means adopted by Congress are not prohibited and are calculated to effect the object entrusted to it, this Court may not inquire into the degree of their necessity; as this would be to pass the line which circumscribes the judicial department and to tread upon legislative ground. *McCulloch* v. *Maryland*, *supra*, p. 423; *Legal Tender Case*, *supra*, p. 450; *Fong Yue Ting* v. *United States*, *supra*, p. 713. Nor may it inquire as to the wisdom of the legislation. *Legal Tender Case*, *supra*, p. 450; *McCray* v. *United States*, 195 U. S. 27, 54; *Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. 146, 141."

In the very recent case of *Nebbia* v. *New York*, 291 U. S. 502, the court reaffirmed the above doctrine in the following emphatic language (p. 537):

> "With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal. The course of decision in this court exhibits a firm adherence to these principles."

It is, therefore, submitted that, if the proposed Federal Child Labor Amendment were ever duly ratified,

15. See, *e. g.*, as to possible extremes and tyrannies of bureaucracies, "The New Despotism" by Lord Hewart, Lord Chief Justice of England, cited by James M. Beck in his "Our Wonderland of Bureaucracy," and "The Federal Octopus in 1933" by Sterling E. Edmunds of the St. Louis Bar.

(*Continued on Page 29*)

CERTAINTY IN THE CONSTRUCTION OF THE LAW

Important Amendment Made in 1934 to Section 19 of the Securities Act of 1933 Exempts from Legal Liability the Citizen Who Has in Good Faith Acted in Reliance on the Commission's Interpretations of the Act, even Though the Commission May Later Alter Its Interpretation or Some Reviewing Body May not Uphold It—Significance from Point of View of General Legal Development

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THE Securities Act of 1933 as amended by the Securities Exchange Act of 1934 contains a provision the significance of which from the point of view of general legal development seems not to be fully appreciated either by members of the legal profession or by the citizens whose lives it will affect. The reference is to Section 209(b) of the Securities Exchange Act of 1934, which amended the provisions of Section 19 of the Securities Act of 1933. To the original section, which authorized the Securities and Exchange Commission to adopt and alter rules and regulations and definitions of terms, the amendment of 1934 added the following provisions: "No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Commission, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason."

The significance of these provisions will appear when we recall the dilemma which normally confronts the citizen when faced with new and often complex legislation which imposes upon him new legal duties: he must at his peril interpret the frequently ambiguous language of the new law, perhaps to be told later by some reviewing body, usually a court, that he has misinterpreted the law and thereby incurred a burdensome liability. Confronted by such a dilemma the members of the business community may often hesitate to enter upon legitimate business enterprises, fearing that even in spite of the best of intentions they may run afoul of the new law. The provisions of the new amendment are intended to meet this situation by conferring upon a small body of experts, who will continually study the operations of the law in question, the power to furnish the citizen with the information he needs if he is to keep within the law. A careful reading of the precise wording of the amendment will reveal that it differs from many apparently similar provisions in that there is no attempt on the part of the legislative body to authorize an administrative body to impose upon citizens legal burdens or liabilities which without the administrative action in question would not exist. Such procedure may be valid and necessary in some cases—see the discussion below—but is not attempted by the amendment of 1934. What is provided for is the creation by administrative action of exemptions from legal liabilities, exemptions which might not otherwise exist under the other provisions of the Act: the honest citizen who in good faith acts in reliance upon the interpretations of the Act embodied from time to time in the rules and regulations of the Commission is by the terms of the amendment exempted from legal liability, even though later the Commission may alter its ruling or some reviewing body may disagree with the Commission's interpretation of the statute.

The difference between the two things—imposition of liability by means of administrative action and exemption from liability because of reliance on such action—while recognized in our legal system and adopted in some instances in legislation, has not hitherto been given the emphasis and recognition which it appears to deserve. It is the purpose of the present paper to direct attention to the importance of the difference and to discuss briefly the validity under our constitutional system of the provisions of the 1934 amendment in question.

It will perhaps clarify our discussion if we first recall to mind the nature of the constitutional problem raised by attempts on the part of the legislative body to provide for the imposition of liabilities through the action of administrative officials. Provisions of this kind are more or less familiar to lawyers and within certain fairly well recognized limits are held constitutional. It will be worth while to note one or two concrete examples. The Act of August 2, 1886, 24 Stat. 209, c. 840, which levied a tax upon oleomargarine, conferred upon the Commissioner of Internal Revenue the power to prescribe, with the approval of the Secretary of the Treasury, the marks, stamps and brands to be placed upon packages of oleomargarine when sold by retail dealers, and made it a criminal offense to sell oleomargarine in packages not so marked. In pursuance of the power thus granted the Commissioner had with the approval of the Secretary issued regulations prescribing the words to be used, size of letters, etc. It was held in *In re Kollock*, 165 U. S. 526 (1896), that this delegation of power to an administrative official was constitutional, as it conferred on the Commissioner merely the power to regulate "a matter of detail." To be noted is that if Congress had not delegated this power to the Commissioner but had merely prescribed that packages sold should, for example, be "legibly marked" with certain words, the duty to use letters of the size prescribed by the Commissioner might and probably would not have existed: it would have been a question for determination in a judicial proceeding whether the particular size of letters used conformed to the statute.

The leading case, and one of the most striking, of a similar delegation to an administrative official of power to impose a liability by filling in the general

definitions of terms in a statute, is that of *Buttfield v. Stranahan,* 192 U. S. 470 (1904). In that case the statute in question, the Act of March 2, 1897, 29 Stat. 604, provided substantially as follows: Section 1 made it "unlawful for any person or persons or corporation to import or bring into the United States any merchandise as tea, which is inferior in purity, quality, and fitness for consumption to the standards prescribed in Section 3." Section 3 then provided that "the Secretary of the Treasury, upon the recommendation of said board [a board of seven persons, experts in tea, provided for in Section 2], shall fix and establish uniform standards of purity, quality, and fitness for consumption of all kinds of teas imported into the United States, and shall procure and deposit in the custom houses . . . duplicate samples of such standards. . . All teas, or merchandise described as tea, of inferior purity, quality, and fitness for consumption to such standards shall be deemed within the prohibition of the first section hereof."

The Supreme Court held that the statute fixed a "primary standard" and conferred upon the Secretary of the Treasury "the mere executive duty to effectuate the legislative policy declared in the statute. . . Congress legislated upon the subject as far as was reasonably practical, and from the necessities of the case was compelled to leave to executive officials the duty of bringing about the result pointed out in the statute."

It is of course familiar learning that in this group of cases the constitutional problem grows out of the separation of powers into legislative. executive, and judicial, and the theory that no one of the three independent departments of the government may properly exercise powers belonging to the others. The specific question involved in cases like *Buttfield v. Stranahan, supra,* is, whether there has been an improper delegation of legislative power to an administrative official.[1] In the course of our legal development it has come to be recognized that between so-called "legislative" and "executive" powers there is no sharp line of division but rather a broad zone or penumbra, a sort of twilight zone or "no-man's land," which may permissibly be occupied, so far as the constitution is concerned, either by one or the other of the departments of government concerned. It is also familiar learning that within the limits outlined in *Buttfield v. Stranahan, supra,* delegation of power to administrative officers to fill in the details of statutory definitions are a recognized part of our governmental organization, even though the result is to impose by means of administrative rule or regulation a liability which would, or at least might, not exist without the administrative action in question.[2]

We come now to the newer type of provision exemplified by the amendment of 1934. As already emphasized, this provision makes no attempt to bind the citizen in the way of imposing liabilities upon him by administrative action, but merely to protect him from liability where in good faith he has relied upon the administrative action provided for in the statute in question. The practical need for some such provision has already been pointed out, but it may be worth while to amplify what has already been said as to this phase of the matter. The difficulties confronting the citizen when a new law is passed grow out of the fact that the law must necessarily be expressed in words, and that these words are not only not self-defining but defy all attempts to give them an unambiguous meaning as applied to the complex and ever-varying situations in which the citizen finds himself. That this must be true appears clearly when we realize that attempted definitions of words will themselves also of necessity use other words, themselves not defined, thus leading ultimately to ambiguity and doubt. The result is that when the citizen is confronted with a new piece of legislation imposing new liabilities, such as the Securities Act of 1933, he is beset with what is perhaps for him the insoluble problem of finding out just what he is to do to comply with the statute.[3] As already noted, our legal system has all too often left the citizen without adequate protection: he must guess as best he can at the meaning of the statutory provisions and run the risk of subsequent liability. Where a solution of this difficulty has been attempted, it has in the past usually taken the form of a delegation of power to administrative officials similar to that in *Buttfield v. Stranahan,* a plan which has certain obvious disadvantages when pressed beyond a certain point. These disadvantages are avoided by the simple and flexible plan of the amendment of 1934, under which the meaning of the statutory provisions in question may be clarified from time to time by the rules and regulations of the Commission to the extent, and only to the extent, that if the citizen who wishes to obey the law acts in good faith in conformity with the interpretations of the Commission he will not incur liability, even though later a different interpretation may be made either by the Commission or perhaps by a court exercising powers of judicial review.

Before considering the validity of the amendment of 1934 from a constitutional viewpoint, certain aspects of its practical operation should be noted. The citizen who follows the administrative determinations of the Commission is protected: what happens if he refuses to do so? The answer is that he thereby assumes the risk that his interpretation of the Act will later not be upheld by the courts when the question is raised in the appropriate way. If the court before whom the question may come agrees with the Commission, then and then only will the citizen who has refused to accept the Commission's interpretation be liable. On the other hand, if the court agrees with him rather than with the Commission, he will be under no legal liability, this in spite of the Commission's administrative determination. The net practical effect of the provisions under discussion thus is, that the final interpretation of the statute is left for decision in the course of judicial proceedings. Such judicial decisions when made necessarily supersede the administrative determinations of the Commission, which are thus tentative and of effect only in the way of exempting the citizen from liability if he acts in accord with them before they have been held invalid by the courts,

1. Under some state constitutions the doctrine of the separation of powers is explicitly adopted by clauses expressly forbidding one department to exercise powers belonging to another. An example is Article XXX of Part I of the constitution of Massachusetts, which reads: "In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end that it may be a government of laws and not of men."

No such clause is contained in the federal constitution. In the federal system therefore the doctrine of the separation of powers is an implication from the creation of the three separate departments and the enumeration of the powers of each: see the paper, How May the United States Govern the Philippine Islands? by Walter Wheeler Cook, 16 Political Science Quarterly, 68-78, (March, 1901).

2. The general problem is discussed and many of the cases reviewed in Edward B. Whitney, A Philippine Constitutional Question—Delegation of Legislative Power to the President (1901) 1 Columbia Law Review, 33.

3. On the general problem involved, see the present writer's papers on: Scientific Method and the Law (1927) 13 American Bar Association Journal 303; The Logical and Legal Bases of the Conflict of Laws (1924) 33 Yale Law Journal 457.

or perhaps altered by the Commission itself. He is left, as now, with a right to appeal to the courts for a final determination, and when he so appeals is exposed to no greater risk than is normally the case when no such administrative interpretations are provided for.

Precedents for this type of administrative proceeding are not entirely lacking. Its possibility was foreshadowed long ago by the opinion of the United States Supreme Court in the case of La Bourgoyne, 210 U. S. 95, 134 (1908). In that case, the Board of Supervising Inspectors had, pursuant to legislative authority, by regulation laid down certain requirements for the equipment of vessels. Action by parties injured was instituted against a vessel on the ground, among others, that the equipment provided did not conform to the statute. Having found that the equipment did conform to the regulations issued by the Board, the Court said, page 134:

"Again, the contention that the regulations of the Board are inconsistent with the statute, we think when the statute is considered as a whole, is without merit. *Even, however, if it were otherwise, as compliance on the part of the petitioner with the regulations adopted by the board was compelled by law, it cannot be that upon it was cast the duty of disobeying the regulation at its peril, thus, on the one hand, subjecting it in case of non-compliance to the infliction of penalties, and on the other hand, if it fully complied with the regulations, imposing a liability upon the assumed theory that there had been a violation of law.*"

Practices developed in the Treasury Department are obviously based upon the idea under consideration. These practices provide a warning period for the enforcement of administrative determinations resulting in changes in rates of Customs duty. (See example, 66 Treasury Decisions, No. 47261, September 27, 1934; 66 Treasury Decisions, No. 47290, October 18, 1934). This procedure, in effect, concedes that a previous ruling was erroneous, involving an error in the application of legal principles to a stated set of facts; but in place of the recognized principle, which the courts would apply, that such a ruling has been law from the beginning of time, not only fails to assume that the change is of retroactive effect, but in addition provides an interim period before the decision will become effective, to permit those affected to adjust their situations accordingly. The distinction between the imposition of burdens and absolution from liability is apparent here, in that this principle does not appear to be applied to cases where a change in regulation provides less rather than more burdensome results. (See for example, 66 Treasury Decisions, No. 47251, September 20, 1934).

Sanction for these practices of the Treasury Department appears inter alia in Section 516 of the Tariff Act of 1930. That section provides that a domestic manufacturer may object to a classification, for duty purposes, of merchandise in which he is interested as a producer; and that if the Secretary of the Treasury considers his protest justified, he may change the classification to become effective thirty days after promulgation. Other examples are certain provisions of the Revenue Acts of 1924 and 1926. For instance, Section 1108(b) of the Revenue Act of 1926 provides that in cases where a sale or lease is made in reliance upon a ruling, regulation, or Treasury Decision existing at the time, holding that the sale or lease was not taxable, no tax under the Act shall be imposed. Again, subdivision (b) of the same section recognizes the principle that changes in administrative determinations or regulations need not be applied with retroactive effect.

The practical convenience and desirability of the type of regulation in question seem clear. There remains the question whether there are objections on constitutional grounds. Possible objections may be based upon the doctrine of the separation of powers, the argument being that there is an unconstitutional delegation of either legislative or judicial power to an administrative body. Is there such an unconstitutional delegation? It seems abundantly clear that there is not. Here first of all we need to recall the case of La Bourgoyne, 210 U. S., 95, 134 (1908) discussed above, in which it was held that one who had in good faith complied with the regulations issued by an administrative board in supposed compliance with the statute in question had incurred no liability, the Court saying that this would be true even if the regulations were inconsistent with the statute. In that case the statute contained no explicit provision exempting the defendant from liability in case of compliance with the Board's regulations. Clearly if the exemption would exist in the absence of specific legislative enactment to that effect, the specific provisions of the amendment of 1934 under consideration must be valid. Aside from the authority of that case the matter may be put shortly as follows: In the statute under consideration the legislative branch of the government is defining the conditions which, when they exist, are to result in the imposition of legal liabilities upon persons engaged in certain enterprises. In its discretion the legislative body has decided that it would be unfair to impose liabilities upon persons whose conduct is in compliance with the regulations of the Commission, and so has provided that conduct of that kind shall not give rise to legal liability.[4] It seems clear that to deny to Congress the power to do this would be to infringe upon its discretion to determine when and when not legal liability shall exist. It thus becomes entirely unnecessary to rely upon the principle exemplified in *Buttfield v. Stranahan* and similar cases, where it is sought to bind the citizens by administrative determinations which result in the imposition of liabilities, and, it would seem to follow, the limitations of that doctrine are not necessarily applicable to provisions of the kind here in question. The conclusion seems clear that the constitutional validity of the type of administrative determination under discussion can not be questioned on the ground of an unconstitutional delegation of legislative or judicial power. All that Congress has done is to define what conduct shall and what shall not result in legal liability.

4. An examination of the language of the statute shows that the amendment in question has been carefully drafted to express precisely this intention. The language is: "No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Commission, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason."

Judicial Salaries Increased in the Union of South Africa

The Parliament of the Union of South Africa by a recent enactment has increased the salaries of the judges in the out provinces £250 and of the coastal provinces £500 so that the salaries are now as follows: Chief Justice of South Africa, £3,500; Ordinary Judge of Appeal of Appellate Division, £3,250; Judge President of a Provincial or Local Division, £3,000; Puisne Judge of a Provincial or Local Division, £2,750.

The judicial pensions obtaining in the Union of South Africa remain as follows: Chief Justice, £1,300; Ordinary Judge of Appeal, £1,200; Judge President, £1,100; Puisne Judge, £1,000.

PUBLIC FINANCING

Some of the Causes and Sources of the Economic Depression Which Have a Potent Influence upon Public Financing—Recent Changes in the Forms of Wealth from Things to Promises—Diminishing Proportion of the Payroll Stream to Investment in Fixed Capital Assets for Further Increase of Production—Ratio between National Debt and Wealth out of Balance—Taxing Problems of States, Counties and Municipalities—Two Significant Government Operations*

By Jacob M. Lashly

Member of the St. Louis Bar; Chairman of Association's Committee on Commercial Law and Bankruptcy

TWO years ago I was called upon, as Chairman of the Board of the St. Louis Chamber of Commerce, to discuss the subject of taxes and their relation to the cost of living. Movements were being fostered in various quarters with the idea of bringing the cost of Government into harmony with the enforced policies of economy and retrenchment which the depression had pressed upon business.

Brief inquiry upon that occasion revealed that the people of the country were spending fourteen billions of dollars annually in taxes. Reducing this total to its minute equations, I demonstrated that at every tick of the clock day and night there was ticked off the sum of $444 for the upkeep of Government; every minute of the twenty-four hour cycle the sum of $26,636 was the cost of measurable peace and security. It seemed a bit surprising, but each hour of the day and night Government was costing the sum of $1,598,173 and the grand total of 47 million dollars was paid on every working day. Individually that meant the sum of $115.00 per annum in taxes for every man, woman and child in the United States. Eliminating the millions of persons then out of work and the non-taxpayers, our per capita Government cost was shown to be exactly thirty cents out of every dollar of the national income of those who worked and earned. The Government was supporting one public employe for every nine of those gainfully employed in private business enterprises. Out of every work day, the workers were contributing the earnings of one hour each for the support of Government.

Numerous persons more interested in the mathematical aspects of modern trends than I have set down the figures available since that time. We do not require their computations to inform us that the rate and quantity of public spending, as well as the number of public servants have enormously increased.

When I was assigned the subject of "Public Financing" for discussion at this conference, I concluded to abandon, so far as possible, the mathematical form of approach to the problem and to limit my observations to a few noticeable major trends. Nevertheless some totals will be needed from time to time to punctuate the argument.

It is obvious that some aspects of the causes and sources of the economic depression have a potent influence upon public financing and that any thoughtful discussion of the latter will involve a consideration of the former. The first of these to which I should like to direct your thought is that of recent changes in forms of wealth from *things* to *promises*. The processes of integration of physical properties into the hands of corporations have been coincidental with the issue and flotation of vast quantities of quasi-commercial paper which, in the years of 1926 to 1929, became the subject of the most colossal buying, selling and brokerage program in all history. In the ten years between 1923 and 1933, new issues of stocks and bonds of business corporations reached the fabulous total of 52 billions of dollars. Most of this huge quantity of commercial securities was based upon the net earnings experience of corporations operating the enterprises during prosperous periods and not upon actual values of the properties upon which the liens were carried. Net earnings figures were accepted as fairly representative of the amounts of bond interest and stock dividends which the enterprises could afford or be driven to pay and the reorganizations were floated upon those bottoms. These corporate promises were found to constitute the most convenient and liquid form of wealth. Thousands of comfortable industries, prosperous under more moderate capital structures, embraced the newest style of debt expansion and converted their book surpluses into merchandise for the security brokers. The sudden possession of large amounts of cash returns from these sources naturally stimulated the erection or purchase of new buildings and the acquisition of new machinery and tools for speeding up production, that the service charges on the new debt overburden might be paid out of earnings. Moreover, much of the new wealth was invested in bonds and stocks of other enterprises expanded upon the same theory as their own. What an irony of faith and hope! The Gods smiled when the break-down in earning power of corporations made it manifestly impossible for many of them to produce interest and dividends upon these swollen structures and left the vicarious owners of wealth holding the unfulfilled and unfillable promises of each other.

The waning ability of corporations to pay their property taxes while keeping up the drive for interest money and dividends, added to the elusive character of these new forms of wealth, has presented many acute and difficult taxing problems for the states, counties and municipalities. The perplexities of local taxing bodies have been increasingly enhanced by the growing demands of the people for more and greater

* Address delivered at Kansas City on Nov. 22 before the Conference of Business Men and other organizations under the auspices of the Chamber of Commerce of Greater Kansas City and the Kansas City Board of Trade.

public services. Rapid civic growth and development require an abundance of new buildings, streets and sewers. To the traditional functions of Government, preserving peace and order and supplying the means of public health and safety, there have grown demands for state and local support of the aged and incapacitated members of society, veterans among the employes of the public, policemen, firemen, teachers; of playgrounds, libraries, botanical gardens and zoos, swimming pools, art galleries, public entertainments and every provision for basic and technical education. Unemployment and distress relief of course has created emergency needs of vast proportions which private gifts are no longer able to supply. The economy of neither the state nor local governments has been planned in such manner as to qualify them for the discharge of these added burdens. The invention of new and painless methods of taxation has passed from the realms of political sagacity into those of the arts and sciences. Income, inheritance and sales taxes have become the chief reliance of states to supplement the deficiencies of the property tax in a modern economy. The number, variety and ingeniousness of plans of local taxation now in vogue would have passed belief in another generation. Henry George, the single tax prophet of the post civil war reconstruction days, might find food for thought and material for a lecture in every town or hamlet in the land.

The extravagant expansion of indebtedness by many of the muncipalities themselves has aggravated the financial difficulties which they have sustained as a result of the depression, and multiplied dilemmas of their own contrivance. The fixed nature of debt service charges prevents any substantial curtailment of expenditures in many places, and thus opposes an insurmountable barrier to tax reductions. As revenues decline, fixed debt charges, in conjunction with increasing outlays for unemployment relief, make heavy inroad upon available funds and leave but little for current operations. As a result of real estate inflation and other boom factors, no small number of local governments have borrowed beyond all reason or capacity to repay. More than 2,600 of them have defaulted on part or all of their indebtedness. Others have fulfilled their obligations only with great difficulty. It seems almost as if some of the cities had deliberately planned for their own embarrassment in event of hard times.

State and local net indebtedness increased from 3.8 billions of dollars in 1912 to 8.7 billions of dollars in 1922 and to 17.6 billion dollars in 1932. Not the depression alone, but a defective or complete lack of intelligent and consecutive fiscal planning is responsible for most of the civic financial failures. Some of them now are engaged in repeating their mistakes in ill-timed efforts to evade responsibilities of their own creation. Reckless and unstatesmanlike resort to bond issues for the discharge of operating or recurring expenditures in violation of sound basic principles of public economy is not an infrequent feature of municipal government financing. This characteristic may well have been one of those which moved Will Durant, the modern political philosopher, to exclaim that the great American cities are the most poorly governed political subdivisions in the world.

There is another development which I must now introduce as one of the very important and influential factors underlying much of the public spending of today and probably of the next two or three years. It is the gradual drying up of the payroll stream and the investment by owners of an unhealthy percentage of the profits of business and industry in fixed capital assets and equipment for the purpose of increases in volume production. In the acute competitive conditions prevailing since the close of the World War, the individual endeavor of competing enterprises has been to increase output and reduce overhead production costs. With the best minds in the world concentrated upon this objective, the production costs per unit have been steadily forced downward by the invention and improvement of labor saving devices and scientific production methods. The wage stream, so vital to the life of commerce, has suffered a steady reduction in comparison to the volume of income profits resulting from the operations of industry and the distribution of processed commodities. Although dividends and interest payments on expanded capital investments, which reached their high point in the year 1930, had mounted to 209% of the 1923 totals, the volume of wages paid to industrial workers had receded 16% in that period and was to decline another 21% in the following year. There is a serious economic cul-de-sac involved in any universal labor policy or business practice which leads to such a sequel. The wage earners normally furnish about 90% of the customers for retail merchandise. Nothing could be more obvious than that the partial damming up or diversion of this vital stream would have the effect of an increased volume of marketable products being offered to a constantly diminishing number of customers having money with which to buy.

Upon the other hand, the investment of these wage withdrawals in permanent capital improvements accomplishes a gradual fixation of the circulating medium. Let us examine the accuracy of that statement. It must be conceded that the purchase of structural steel, of stone, brick and lumber, speeds up the markets in those commodities and necessitates the employment of skilled and other workmen and so increases money spending and creates employment. But the benefits which flow from these construction operations are not comparable to the injurious effects of permanently storing overbalanced quantities of work energy and capital profits in a fixed location withdrawn from further interchange. For illustration let us take the great Pyramid of Egypt. Pliny tells us that three hundred sixty thousand men were engaged for twenty years upon the erection of this mammoth structure. The project employed in building approximately twenty-five per cent. of the employable man power of that ancient empire. It was necessary for the other seventy-five per cent. to grow, process and furnish the workers with the onions, leeks and occasional animal diet which they enjoyed and the modest apparel which they wore. Of course, the wages which the workers took were given back to the others in exchange for their living, but the work hours, the living energy, the sacrifices which they poured into that colossal tomb have rested there through the centuries which have intervened.

As a matter of fact, there are today more than 35,000 pyramids in America, permanent, fixed capital structures builded from the proceeds of new wealth created out of promises given to the owners of other dead factories or withdrawn in part from the circulation stream, capable neither of rendering a service to the community nor of producing their share of the governmental expenses involved in their preservation and protection. Nor may these idle boilers be fired

again under the old percentages of profit distribution, for this would be but to turn their potential energies to a further production of surplus commodities for markets which are only just beginning to show signs of relief from their recent strangulation. The cycle must not be further degraded. A moderate and balanced redirection of the currents of the profit increment to wealth must and undoubtedly will emerge from the drastic experiences of the last decade. If the generally accepted published tables concerning national income are to be credited, it will be observed that in the normally prosperous year of 1923 for every dollar of income profits distributed as interest and dividends, eight dollars and sixty cents was paid to workers for wages and salaries; in the year of greatest income volume, 1929, for every dollar of income profits distributed to owners of bonds and stocks only the sum of four dollars and thirty-five cents was spent for wages and salaries, while in the year 1932 the ratio of income profits to wage stream volume was as one to three and seven-tenths. This short table furnishes graphically the story of the depression. The redistributing of *existing* wealth is a fundamental objective of socialism. Doing so by violence is communism. But the redistribution of the profit increment to *new* wealth for the restoration of a sound economic balance is an appropriate function of Democracy.

The Government has invited business to study its own problems and to plan its own future by such collective action as will prevent the calamitous debacle which has proven to be the natural fruitage of "rugged individualism."

Similar problems in other countries are being managed by Government force applied directly and autocratically. The recently reported reorganization of business and industry in Italy into twenty-two corporations each headed by the Dictator, Mussolini, testifies to the surrender of the last line of defenses of its business autonomy and independence. Business executives and labor representatives in our country for the past year have been forging and adapting constructive plans and courses for the accomplishment of the same purposes under the aegis of the National Recovery Act. The degree of success achieved by American business in this undertaking will undoubtedly affect the future course of its autonomy and independence. All agree that the people must be fed, from the abundance within our reach. There is a strong ingredient of social justice involved in this principle, but also there is in it a sound policy of business vision. The Federal Government has already distributed approximately three billion dollars for the relief of human needs and has yet to face the high point in expenditures for this cause. In one way of speaking, this amounts to an involuntary redistribution of the profits of business to that extent, since the funds expended have been or must yet be raised through levies on business. There is ground for hope that such a point may be reached in the general acceptance of the principle of voluntary redistribution within the next two years that the need for further extensive use of doles will be automaticaly obviated. If, however, resistance to these policies shall develop such strength as to prevent their accomplishment upon a scale necessary to achieve at least general security of subsistence it seems inevitable that such an obviously necessary and just policy will be accomplished involuntarily through payroll taxation and various forms of state or Federal Government insurance.

There is yet a third phase of economic practice which has an intimate relationship to public financing. It is another lost proportion. One of the very significant phrases which has come out of the depression is "Credit misalignment brings about credit constriction." The aggregate debts of the country, public, private and corporate are reported at the sum of one hundred eighty billions of dollars. The most accredited estimates appear to have placed the gross value of the wealth of the United States at the sum of two hundred fifty billions of dollars at the beginning of 1934. Assuming those totals as a fair approximation, the ratio of assets to liabilities is thus shown to be as of one and four-tenths to one. The relation of assets to liabilities in prosperous years approximated two and one-half to one. *Hence the asset and debt ratio is out of balance.* Obviously either of two alternatives, or a mixture of the two, is necessary to regain this lost proportion.

To re-establish a normal debt ratio of two and one-half to one, without increase in the wealth of the United States, would require a scaling down of eighty billion dollars or a 44.4 per cent reduction in outstanding debts. If we assume an increase in the value of wealth to three hundred billion dollars by the end of 1934, due to Administration measures, and other causes, there yet would be a debt reduction of sixty billion dollars to be effected for the restoration of values and the return of free credit flow. This would represent a decrease in debts now outstanding of 33⅓%. In order to restore the economic ratio of two and one-half to one with the present debt totals, the values ascribed to existing wealth would have to be increased to four hundred fifty billion dollars. This is not possible. The economic tumble of 1929 occurred when inflated and fictitious values had increased the aggregate total value ascribed to wealth to the sum of three hundred sixty-two billions with liabilities virtually equal to those outstanding today.

The 73rd Congress completed the five point Bankruptcy extension program projected in part by the Hoover administration. It was intended to speed up through these provisions the slow processes of mortgage foreclosure, equity receiverships and normal bankruptcies by affording debtors and creditors more encouragement and better facilities for the composition and adjustment of their rights and differences. The Corporate and Railroad Reorganization laws, administered in the United States Courts, already are beginning to achieve a measurable scaling of over extended debt and stock structures.

In view of the time required in these operations, the constriction in private capital and the consequent indisposition of banks and moneyed interests to lend money upon securities of uncertain future, the Federal Government has temporarily engaged upon two important and significant financial operations. Upon the one hand, in the current and preceding year it has borrowed from the people upon new bond issues approximately four and one-half billions of dollars. Upon the other, it has taken over, through its subsidiary lending agencies, loans from private carriers of the face value of approximately eight and one-half billions of dollars.

Already the major portion of appropriated and available funds for taking over private loans of business, farmers and home owners, has been outlaid or promised. In the case of the Home Owners Loan Corporation, the list of available loans has been closed. But the funds employed by these agencies are revolving, to be loaned again and again as they shall be repaid by the first borrowers. If only a fair amount of success shall crown these adventures of government in private financing there should be no further need of appropriations by the Congress for lending purposes beyond the year 1936. The budget submitted by the National Government last January comprised a two years' program, contemplating ten and one-half billions of dollars of expenditures in 1934 and approximately 5.9 billions for the year 1935. Expenditures and appropriations in the year 1934, however, reached only the sum of seven billion dollars and as a result there is a large sum to be carried over into the current year.

Of course, it has not been possible to provide the means for these outlays from current revenues. In fact, the Government is now in the fifth year of deficit financing. The total accumulated deficit during the four and one-quarter years from July 1, 1930, to September 30, 1934, amounts to approximately eleven and one-half billions of dollars and the national debt has grown during that period from 15.9 billion dollars to 26.6 billion dollars, an increase of 10.7 billions. The debt as of September 30th exceeded the war time peak. In addition to borrowing the necessary money to carry out its lending and relief programs, the Treasury is faced with re-financing during the remainder of this and the next calendar year to the extent of 6.2 billions, which fact must be considered in connection with its credit position. The Government is acting largely in the capacity of intermediary in effecting these credit interchanges, which the people, in the present posture of affairs, lack confidence to negotiate among themselves. With the growth of a healthier sentiment and a more general understanding that there is a coherent policy guiding the public financing of the Federal Government, it is reasonable to expect that the banks and other normal lending agencies soon will feel encouraged to resume direct relations with borrowers, cautiously at first, but with steadily growing confidence as it shall be justified by experience.

DEPARTMENT OF CURRENT LEGISLATION

Federal Legislation: 1934

BY CHARLES F. BOOTS AND JOHN O'BRIEN

Agriculture

PLANNING of production in agriculture to make it accord with consumption and thus escape the incubus of surplus crops, was endorsed by Congress in the most effective way. The class of basic commodities under the Agricultural Adjustment Act, to which the reduction program was applied, was increased especially to include cattle, and interesting new developments in the planning program were introduced in respect to cotton, certain kinds of tobacco, and sugar. The international consequence of control of production in case of each one of these three crops is considerable and varied. Cotton and tobacco are crops of export; sugar, of import. In the first two, the correlation between production and consumption must take into consideration the quantity of the article to be produced for foreign consumption, and therefore the capacity of consumption for American goods in markets outside the United States; but in planning for sugar the Congress could base its scheme on consumption in the United States and adjust production in this country and imports, to probable consumption here. This difference is plain in the varying treatment of the commodities.

Public No. 142 considerably enlarges the class of basic agricultural commodities under the Agricultural Adjustment Act. The bill had been originally drawn to include only cattle, but in the Senate amendments were adopted, and later agreed to in conference, including peanuts, rye, flax, barley and grain sorghums. Special provision was also made for the cattle industry by an authorization of $200,000,000 to enable the Secretary of Agriculture to finance surplus reductions and production adjustments with respect to the dairy and beef cattle industries, to carry out any of the purposes described in subdivisions (a) and (b) of section 12 of the Agricultural Adjustment Act, chiefly for rental and benefit payments to compensate producers for cutting production, and to support and balance the markets for the dairy and beef cattle industries. A further sum of $50,000,000 was authorized to enable the Secretary of Agriculture to make advances to the Federal Surplus Relief Corporation for the purchase of dairy and beef products for distribution for relief purposes, and to enable him to eliminate diseased dairy and beef cattle and to make payments to owners with respect thereto.

The Bankhead Cotton Control Act (Public No. 169) and the Kerr Tobacco Control Act (Public No. 483) represent new and far-reaching legislative efforts by the Federal Government to stabilize the cotton and tobacco growing and marketing

industries by limiting production of these commodities to consumption, and thus eliminating the harmful economic effects of excessive surpluses. Both Acts, as is seen in their similar declarations of policy (sec. 1, No. 169; sec. 2, No. 483), are based on a desire of Congress to balance production and consumption, and show the purpose of Congress to exercise its interstate and foreign commerce and taxing power to effectuate this end. The Cotton Act does not apply to cotton having a staple one and one-half inches long or longer. The Tobacco Act applies to specified kinds of tobacco.

Both Acts are temporary by their terms and contingent upon the continued existence of economic emergency. While both Acts are expressly effective for the current crop year (1934-1935), their production-limiting features apply during the succeeding crop year only if there is a finding that two-thirds of the producers, in the case of cotton, and three-fourths of the producers of any of the particular types of tobacco, in the case of tobacco, favor the levy of a tax on the commodity harvested during that year (sec. 3(a), No. 169; sec. 3(b), No. 483). In addition, under the cotton Act, the President must find the continued existence of the emergency to make such features applicable during such succeeding year (sec. 2). Both Acts terminate the tax on commodities harvested after the President finds the emergency over and, in the case of the tobacco Act, after the end of the crop year when Agricultural Adjustment Act benefits cease (sec. 2, No. 169; sec. 13, No. 483). Neither Act applies to commodities harvested after the spring of 1936 (sec. 2, No. 169; sec. 3(b), No. 483).

Production of surpluses is discouraged by their taxation. In the cotton Act, 10,000,000 bales is expressly fixed as the amount of production during the crop year 1934-1935 which may be ginned tax-free (sec. 3(c)), and thereafter the Secretary of Agriculture is to fix the tax-free quantity, which is to be the amount of his estimate of demand minus available supply (sec. 3(a)). The cotton and tobacco Acts require the Secretary to allocate the quantity fixed as the proper balanced production not only among the states, then among the counties in each state, but also to each farm. This task is not so difficult as it might seem since under the A. A. A. unpaid county committees had been formed which, working with the county farm bureau agent, had already fixed the acreage in each farm to be ploughed under in carrying out acreage reduction contracts. This machinery will apply the new restriction and may also be used to ascertain whether the requisite percentage of farmers affected want to continue either plan. Officers of the Department supervise the work of the county committees.

The allotments to state and county are made on the basis of the average of the preceding five years' crop. The allotment to individual farms is not made in so mechanical a method. The Secretary may take as a basis the average annual crop "for a fair representative period," or by estimating the amount of cotton which the farm would have produced if all the cultivated land had been planted to cotton, and dividing the county allotment on that basis, or "on such basis as the Secretary of Agriculture deems fair and just," which is then to be applied to all farms in the county. The Secretary is especially directed not to penalize in his allotment, those farmers who have voluntarily reduced their cotton acreage, presumably by agreements under the A. A. A. Special conditions in different counties may thus be taken care of by using a different basis. Ten per cent of the allotment of each county is set aside to be assigned to farmers who have not previously planted cotton (or tobacco), or who are entitled to special consideration because of special conditions. The job of dividing this ten per cent, which would run into all kinds of snags if carried out by a bureaucratic procedure directed from Washington, will be made possible by action of the committees of neighbors, themselves planters, with a possibility of check by the Department officers if gross favoritism shows its head in a particular county. The method adopted for allocating amount of production to tobacco farmers differs from that used in the cotton Act. No quantity is fixed as national production, but the amount of tobacco which can be harvested tax-free, is determined by the contract which the farmer makes with the Secretary to limit his production under the A. A. A. To cover cases in which an allotment is impossible by crop control contract, the Secretary may allot to such cases in any county not over six per cent of the amount alloted under contract to growers in that county. Once each farmer is assigned his share of cotton or tobacco, he is given a warrant for the amount, which is non-transferable. In case of cotton, that warrant represents the amount of cotton which he may have ginned and market tax-free.

The total amount of tobacco produced, the sale of which is exempt from tax, is determined by the production limitation program under the Agricultural Adjustment Act, and the amount each producer may sell tax-free is thus fixed by his own agreement made under that Act with the Secretary of Agriculture, so that the contingent for each farmer will be fixed by the farmer and the Secretary. The cotton Act recognizes the danger, in a crop reduction program, of production of other competitive crops on land withdrawn under reduction agreements, by denying an allotment to a producer who fails to agree to the conditions prescribed by the Secretary to insure his co-operation in the reduction program and to prevent expansion, on land withdrawn under lease to the Government, of production other than cotton. Violations subject the warrants to revocation but no criminal penalty is attached to a violation (sec. 6). No such provisions are contained in the tobacco Act.

Both Acts, as indicated, enforce their limitations by the imposition of taxes. The cotton Act puts the tax upon the privilege of ginning. The rate is 50 per centum of the central market price of lint cotton as proclaimed by the Secretary, but not less than five cents per pound (sec. 4(a)). Relief is provided against the immediate burden of the tax by permitting postponement of tax in cases in which the cotton is to be stored on the farm (sec. 4(f)). To prevent escape of ginning tax by the export of seed cotton, the export of cotton which, if ginned, would be subject to tax, is prohibited (sec. 14(c)). The tobacco tax is upon the first sale of the tobacco. The rate is 33⅓ per centum of the sales price, but the Secretary, if he finds the policy of the Act would be best effectuated thereby,

may reduce the rate to not less than 25 per centum of the price (sec. 3(a)).

Both Acts provide for the collection of the taxes by the Treasury and apply the familiar methods of collection and refund. Because of the peculiar problems in the enforceability of such taxes, more elaborate penal and administrative provisions than is usual are found in the Acts. Thus, particularization of methods of identification, prohibitions upon their destruction, requirements of information returns, and prohibitions on transportation are found in the Acts (sec. 10, 11, 12, 13, and 14, No. 169; sec. 6, 7, 8, 9, and 10, No. 483).

In case both of cotton and tobacco, imports must be taken into consideration in preserving the balance between consumption and production for which the statutes are intended. Imports of cotton are not limited by special taxes but they must be identified. One of the types of tobacco under the Act, cigar leaf tobacco, is treated with greater particularity. The Secretary of Agriculture is instructed to establish quotas for the import into the United States of that type of tobacco, based on the average quantities imported in the crop years 1932-1933 and 1933-1934, except that for Cuba the basis taken is the crop years 1928-1933. The Secretary is further authorized to allot the quotas so fixed among importers "in such manner as he may deem fair and equitable, having due regard to the respective amount of tobacco imported during the crop years 1932-1933 and 1933-1934 by such persons." Cigar leaf tobacco imported in excess of the quota, is subject to a tax fixed by the Secretary by taking the average sales price during the preceding twelve months of domestic cigar leaf and multiplying it by the average per centum tax rate under the Act. This tax will act as a countervailing tax to discourage import into this country of foreign tobacco in excess of the quota.

Both Acts provide for the availability of the tax proceeds for administrative expenses and refunds (sec. 16(c), No. 169; sec. 10(a), No. 483). The cotton Act by its title indicates the purpose to raise revenue, which the tobacco Act does not, and, while the proceeds of both taxes are paid into the Treasury (sec. 19, No. 169; sec. 6(a), No. 483), the cotton Act expressly authorizes the appropriation of the proceeds of the tax therein for the purposes of the cotton program of the Agricultural Adjustment Administration (sec. 16(c)).

Responding to a message of the President requesting the inclusion of sugar beets and sugar cane as basic agricultural commodities under the Agricultural Adjustment Act, along with other provisions relating to those commodities designed to stabilize the sugar industry, the Congress enacted Public No. 213, popularly known as the Jones-Costigan Sugar Act, as an amendment to the Agricultural Adjustment Act. Primarily, as indicated, the Act includes sugar beets and sugar cane as basic agricultural commodities subject to the Agricultural Adjustment Act; but in addition provides, for those commodities, a broad program of treatment which differs in many respects from that accorded to other basic agricultural commodities. Differing from the allotment under the cotton and tobacco Acts, and the method of cutting production by reducing acreage, this Act was based on American consumption which is estimated at 6,452,000 short tons raw value. Fixed tonnages are alloted to American producing areas; the beet sugar area is allotted 1,550,000 short tons, and the States of Louisiana and Florida are jointly allotted 260,000 short tons. The balance is to be allotted by the Secretary of Agriculture among foreign countries and Hawaii and the insular possessions, based on average quantities brought into continental United States for consumption, or which was actually consumed therein during the most representative three years in the years 1925-1933, as the Secretary of Agriculture may determine. The Act applies directly to processors and handlers of sugar, not to the planter or farmer, and forbids them to manufacture in excess of territorial quota allotted, or to import in excess of the quota alloted to an overseas possession of the United States, or to any foreign country. The Act is based on the commerce power, and the limitation is imposed to prevent "processors, handlers of sugar and others from marketing in or in the current of or in competition with, or so as to burden, obstruct or in any way affect, interstate or foreign commerce." The Secretary is charged with the duty of alloting quotas among processors, handlers of sugar and others.

To carry out the purpose of balancing production and consumption, the Secretary is directed to determine consumption requirements for each year and even during the year, and to increase the allotments if statistics show that the needs of consumers are greater than was at first estimated. If he increases the allotment, he must apportion the increase among the areas of the United States, overseas possessions and foreign countries, but 30 per cent of the excess over 6,452,000 short tons, must be alloted to continental United States.

In the Senate, an effort was made to give to Hawaii and Puerto Rico fixed quotas but it failed, although as a "compromise" the provisions relating to these dependencies were taken from the paragraph relating to foreign countries and placed in a separate paragraph. The treatment accorded them is substantially the same as in the case of foreign countries. (Hawaiian interests have already challenged the constitutionality of the Act on the ground of discrimination. They met with defeat in the lower court when, in an opinion handed down October 22nd, Mr. Justice Bailey of the Supreme Court of the District of Columbia denied their plea for an injunction and sustained the constitutionality of the Act.) The Act abounds with exceptions to and qualifications of the Agricultural Adjustment Act in the case of sugar beets and sugar cane. Among these are provisions dealing with the definition of processing, the rate of the processing tax, the application of the floor tax, the disposition of proceeds of taxes in Hawaii and the insular possessions, and the disposal of surplus stocks on hand at the time of the enactment of the Act. With respect to the processing taxes, a provision was incorporated, designed to protect the consumer from price advances by reason of the tax, to the effect that the rate of the tax shall not exceed the amount of the reduction in duty by the President under the flexible tariff provisions (since brought about). Among the most controversial provisions in the bill were those providing that all agreements relating to sugar beets, sugar cane or the products thereof may contain provisions which

will limit or regulate child labor, and will fix minimum wages for workers or growers; and provisions authorizing the Secretary of Agriculture upon request to adjudicate any dispute, and making his decision final. This requirement will apply to growers of beets and cane who make crop acreage reduction agreements with the Secretary of Agriculture.

An important addition to the Agricultural Adjustment Act, not limited to sugar beets and sugar cane, is the section providing heavy penalties for any person convicted of making any statement, written or oral, intended or calculated to lead any person to believe that any amount deducted from the market price of a commodity consists of tax, or that any charge for processing consists of tax, or that any part deducted from the gross sales price of a commodity in arriving at the basis of a settlement under any contract, or ascribing any particular part thereof to tax, knowing that such statement is false. It had been charged by the Agricultural Adjustment Administration that abuses had been committed with respect to the processing tax in the respects covered by the new provision, and that "advantage has been taken of American farmers by dishonest persons purchasing from them, all in the name of 'tax'" (House Report No. 1109, 73rd Cong., 2nd session). The application of the processing taxes and the exercise of the powers vested in the President or in the Secretary of Agriculture, in the case of sugar beets and sugar cane, is limited to three years (unless by action of the President the Agricultural Adjustment Act is terminated at an earlier date).

Tariff

Public No. 316 responds to a request of the President that there be created machinery to permit prompt adjustment of commercial relations with foreign countries. The House Committee report emphasizes the opinion of the Committee that American commerce was handicapped by the lack of such machinery which forms a part of the government organization abroad. To the ponderous method of securing adjustments by commercial treaties, requiring the approval of two-thirds of the Senate and legislative action afterwards to put into effect the American side of tariff bargains so negotiated, the statute adds a new method.

The statute represents the first major tariff enactment since the Hawley-Smoot tariff act of 1930. Briefly entitled "An Act to amend the Tariff Act of 1930," the Act in its preamble declares its purpose to be expansion of foreign markets as a means of assisting in the emergency and restoring the American standard of living, overcoming domestic unemployment, increasing the purchasing power and establishing and maintaining a better relationship among the various branches of agriculture, industry, mining and commerce. It grants to the President the power to enter into "foreign trade agreements with foreign governments and instrumentalities thereof", whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting foreign trade of the United States, and that the purpose declared in the preamble will be promoted thereby. The Act further gives to the President the power by proclamation to provide for carrying out any foreign trade agreement by making such modifications in the existing duties and other import restrictions, or to impose such additional restrictions, or to prescribe the continuance of existing customs or excise treatment of any article covered by foreign trade agreements. The power over the tariff is subject to two definite limitations: first, that there shall be no increase or decrease of more than 50 per cent in any existing rate of duty; second, that there be no transfer of any article from the dutiable to the free list, or vice versa. These are the limitations which the flexible provisions of the Tariff Act of 1930 imposed on the power of the President to raise or lower duties in order to equalize American and foreign costs of production.[1]

The term "duties and other import restrictions" is defined to include (1) rate and form of import duties and classification of articles, and (2) limitations, prohibitions, charges, and exactions other than duties imposed on importation or imposed for the regulation of imports. The latter description is intended to exclude the so-called "excise" duties imposed only to equalize domestic taxes. However, these duties may be frozen, as may the free list, by the authority to provide for continuance of existing customs or excise treatment of any article.

The advantage given to a country in a foreign trade agreement will, under an express provision of the Act, be extended to similar goods brought in from any other country, so that in effect an agreement with one country giving a low rate or some other advantage to specified articles from that country will apply to the same articles coming from all countries. This provision is an application of the unconditional most-favored-nation clause which is contained in treaties of commerce between the United States and other countries. That clause provides that an advantage given to the goods of any other country by either party to the treaty will be extended to the goods of the other party, so that if the President made an agreement with any country giving an advantage to its goods, the same advantage would have to be given to the goods of any country with which the United States was bound by the most-favored-nation clause. Consequently, Congress authorized the President to put into effect the changes necessary to carry out an agreement and make those changes apply generally and not only to the country with which the agreement was made. The President, however, "may suspend the application [of his proclamation] to articles the growth, produce, or manufacture of any country because of its discriminatory treatment of American commerce or because of other acts or policies which in his opinion tend to defeat the purpose set forth in this section. . . ." It appears, therefore, that the President may suspend the application of his proclamation and so restore the statutory rates of duty or other provisions in respect to the goods of the offending country while it remains in force as to other countries.

Congress also gave the President power to terminate any proclamation in whole or in part. This may have been out of precaution to make it certain that he could terminate the proclamation

1. Stat. at Large, vol. 46, Pt. I, p. 701, ch. 497.

with the termination of the agreement. During the period of agreement the United States will, of course, be bound by its terms, so that the proclamation could only be properly revoked if the other country fails to carry out its obligations under the agreement.

The House Committee did not believe that the generalizing of tariff duty reductions would affect the purpose of the Act to improve American bargaining power in international trade. Their report says:

"Because of the fact that, as trade is actually carried on, there is a wide differentiation between the commodities which are important as between one country and other separate countries, this generalization of rates does not operate to reduce seriously the bargaining power of a country which, having made one or more agreements, proceeds to negotiate with still other countries. A survey of the situation indicates that almost every important commercial country is the principal supplier of certain articles to the United States. The reciprocity agreements will deal primarily with the articles of which the other parties to them are respectively the principal supplier to this country."[2]

Specific provision is made preserving the status quo in the case of Cuba, permitting an exclusive agreement with that nation and permitting the application of the provisions of the present commercial treaty to rates of duty established under the Act in the case of countries other than Cuba. An agreement has been entered into with Cuba, the first concluded under the Act. Under §311 of the Tariff Act of 1930, foreign wheat may be brought into the United States, manufactured here into flour and the flour shipped abroad without payment of duty on the wheat originally imported. Under the third paragraph of the section, however, it is provided that where flour made from foreign wheat is exported to a country which gives to American flour a benefit under an exclusive reciprocity treaty, the miller who sends to such country flour made from foreign wheat must pay a duty on that wheat equal to the reduction in duty which by the treaty will apply in respect to such flour in the country to which it is exported. "The purpose was to prevent any benefit accruing, under the exclusive reciprocity treaty between the United States and Cuba, to flour manufactured from imported wheat."[3] Cuba is the only country according an exclusive advantage to American flour and this situation remains unchanged, but the revised section provides that, where a country gives a reduction in duty to American flour, and the reduction is generalized to all countries under the most-favored-nation clause, or otherwise, American millers working with imported wheat will not be penalized. Consequently the duty is imposed only in the case of foreign wheat where the flour from which it is manufactured is sent to a country giving exclusive advantages to American flour and not to a country which merely makes a reduction in its tariff which will apply to flour from other countries than the United States.

Agreements concluded pursuant to the Act are subject to termination upon due notice at the end of not more than three years from the date on which the agreement comes into force and if not then terminated are subject to termination thereafter upon not more than six months' notice; but the authority of the President to enter into agreements terminates three years from the date of enactment of the Act. It is significant, however, that foreign trade agreements entered into before such date will continue in force until terminated in the manner prescribed. In order to afford domestic interests an opportunity to voice their views before the President takes action through agreement and proclamation to reduce duties or put into effect other changes in the law which they might consider would affect them, the Senate added to the bill section 4 which provides:

"Before any foreign trade agreement is concluded with any foreign government or instrumentality thereof under the provisions of this Act, reasonable public notice of the intention to negotiate an agreement with such government or instrumentality shall be given in order that any interested person may have an opportunity to present his views to the President, or to such agency as the President may designate, under such rules and regulations as the President may prescribe; and before concluding such agreement the President shall seek information and advice with respect thereto from the United States Tariff Commission, the Departments of State, Agriculture, and Commerce, and from such other sources as he may deem appropriate."

This provision does not require public hearings, nor does it require in the notice of intention to negotiate the specification of the articles in respect of which an agreement may be sought. The President may, however, under his rule-making power provide for any sort of hearing which he deems appropriate, by the agency designated for the purpose of receiving the views of interested parties.

By an amendment adopted on the Floor of the House, section 3 was incorporated in the bill providing that nothing in the Act should be construed to give any authority to cancel or reduce in any manner any of the indebtedness of any foreign country to the United States. Advanced as necessary to permit the effective administration of the Act, the contingent duty provisions of the Tariff Act of 1930 were repealed, and the provisions of sections 336 (the flexible tariff) and 516 (authorizing customs protest by domestic manufacturers) were suspended in the case of articles with respect to the importation of which into the United States a foreign trade agreement has been concluded.[4]

2. H. R. Report No. 1000, 73rd Congress, 2nd Session, p. 16.
3. *Ibid.*, p. 17.
4. H. R. Report No. 1000, 73rd Congress, 2nd Session; Senate Report No. 871, 73rd Congress, 2nd Session.

The Federal Child Labor Amendment

(*Continued from Page* 18)

and Congress thereupon enacted a statute prohibiting "the labor of persons under eighteen years of age," whether in the home, on the home farm, or otherwise, such a statute would be constitutional and valid, and would be due process of law under the Fifth Amendment, in view of the evidence as to the broad intent of the framers of the amendment contained in the Congressional Record, of the grounds pressed upon Congress in 1924, and of the express and clearly plain and unambiguous grant of power not only to "limit" and "regulate" but to "prohibit" such labor.

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SIGNIFICANCE OF THE CRIME CONFERENCE

The Crime Conference recently held at Washington, at the call of Attorney General Cummings, was an important event for many reasons. Here are four of the outstanding ones:

It laid the foundation for complete, effective and whole-hearted cooperation between the Federal and State Governments in the campaign against crime. Every State is expected to do its duty and the National Government will do its part in the sphere which properly belong to it. Cooperation and not centralization is to be the watchword of the new campaign. The Government's wise and necessary decision to play an aggressive part in the campaign is not to be taken either as a threat to the proper powers of the States in this field or as an invitation to the States to grow slack on the job and let the National Government do it all.

Governor Ehringhaus of North Carolina expressed the States' attitude perfectly and clearly in an address delivered to the Conference. It is this, in a nutshell: The States realize the weakness of their methods and will try to improve them. They recognize the importance of Federal cooperation, particularly in the interstate field, and will welcome it. As for the limits of that cooperation, the Governor declared that the Federal Government could go much further than it has gone, without infringing on the State's sovereign powers.

But there is room for cooperation between the States as well as between the States and the Federal Government. Mr. Gordon Dean's paper on "Interstate Compacts for Crime Control" set forth very convincingly how these interstate agreements may be used to deal more effectively with the problem. He also pointed out that recent legislation has given congressional assent in advance to such compacts as States may enter into in order to improve the enforcement of criminal law, thereby removing the delay heretofore incident to these agreements. Add to all this, cooperation within the States themselves, such as that contemplated in the recommendation for the creation of State Departments of Justice or the adoption of other suitable means of coordinating the law-enforcing agencies within the States, and the whole field will be covered.

The Conference has provided definite immediate objectives, in the resolutions overwhelmingly adopted, and this will greatly aid the fight. Again, it has sent forth an impulse which will and should give energy and effectiveness to the movement, not only by stimulating those interested in the matter but also by enlisting the invaluable assistance of public opinion.

And what is supremely important, it has dedicated itself to the struggle, not for a year or a day, but for the duration of the war. It has become a permanent organization and will establish an institution which will furnish a more effective personnel and provide an arsenal of better and more effective weapons. The struggle of course will never end, but it may at least be reduced from the menace of a war to the annoyance of scattered snipers.

THE FRUITS OF SOUND PRINCIPLE

The Revised Rules of the Supreme Court of Missouri, effective November 1, 1934, show the useful practical results that flow from the assertion and maintenance by the highest courts of the States of their right to regulate the practice of law and the conduct of their own officers.

When that Court asserted its power in the Richards case, in a notable opinion by Mr. Justice Atwood, leading members of the State Bar Association were quick to see an important opportunity for its exercise. They were confronted with the problem of bar organization and discipline, rendered more difficult by an unsympathetic legislative branch. They appealed—through means

not necessary to detail here—to the Supreme Court. And that tribunal solved the problem. Members of the Bar are its own officers and it proceeded to outline a plan for the control of their conduct, and for admission to practice.

These rules are found in the pamphlet just issued. Rule No. 35 declares the Canons of Ethics of the American Bar Association to be "the measure of the responsibility of the members of the Bar of this Court and of all courts over which this Court has superintending control, and the disciplinary power of the courts may be invoked for the intentional violation thereof." Nothing in the rule, it is declared, is to be construed as a limitation upon the power of the courts to reprimand and discipline any member of the Bar for fraudulent, unlawful or unethical conduct. By this rule the Association's Canons of Ethics have become a part of the Law of Missouri. These Canons have been frequently referred to and approved as a standard in particular cases, but their elevation as a whole, *in totidem verbis*, to the legal position of the official standard is believed to be unique.

Following the establishment of the rules of conduct, there come, quite logically, provisions for complaints and proceedings thereunder. Still in the exercise of its undoubted powers, the Supreme Court in Rule No. 36 established a Bar Committee in each judicial circuit, to be appointed by the Court, to investigate complaints of misconduct and, where it deems the complaint meritorious, to file an information in the Circuit Court of the county in which the alleged misconduct occurred. It can also file such information of its own accord whenever it thinks the facts justify it. The Committee has all the powers necessary to make its investigation effective, and it or one or more of its members are to act as prosecutors in case court proceedings are resolved on. Details of such disciplinary proceedings are set out. By this device the Bar is given an effective means of enforcing discipline.

The entire Bar is to pay an enrollment fee of $3 per year for the purpose of making the rules effective, according to Rule No. 37, which regulates the entire matter of costs and fees. Here we have a Bar organization by order of Court and it is based on the declared power of the Court to regulate the conduct of its own officers. And the vital question of admission to the Bar is dealt with in Rule No. 38, which establishes standards closely approximating those adopted by the American Bar Association for law study, and meets the exact Association's demand for two years of college work or its equivalent, preliminary to such study. It is worth noting also that the Rule requires proof of good moral character before examination instead of after it.

Nor is Rule No. 39 less interesting or significant. We have had Judicial Councils by legislative action and by Bar Association action, but here we have one by order of the Court. Its composition and function are set forth, and the Court is to appoint nine of its eleven members. The Chairmen of the Judiciary Committees of the Senate and House are to be ex-officio members. With this addition the Missouri structure seems modernized and complete. And all because its highest Court was prepared to use the powers which constitutionally belong to it.

VIVA CALIFORNIA!

The election returns show that the California voters have taken several advanced steps which have heretofore been recommended by the American Bar Association. They have consolidated essential portions of their law-enforcing agencies, under the leadership of the Attorney General, and they have by popular vote conferred on the prosecution and the court the right to comment on the failure of a defendant in a criminal case to take the stand.

But they have gone beyond those recommendations and adopted a plan for the selection of judges at once bold and original. It aims to preserve the best features of the appointive and elective systems. It applies automatically to the Judges of the Supreme Court and the District Courts of Appeal, and may be made to apply to the Superior Court judges in counties which desire it.

Under the plan, the sitting judge runs against his record—that is, there is no opposing candidate on the ballot. The voters simply vote for or against his retention, and in case the vote is unfavorable, the Governor appoints some one to the vacancy, subject to the confirmation of a Board, and he holds until the next general election, when the voters will have a chance to say whether he shall be retained or not.

Its adoption is enough to show that the public is really responsive to reasonable arguments from those in whom it has confidence.

REVIEW OF RECENT SUPREME COURT DECISIONS

Maryland Act of 1933 Denying Summary Mortgage Procedure under Statute of 1898 to Mortgagees unless Decree Is Concurred in by Holders of not Less Than Twenty-five Percent of Entire Mortgage Debt, Held not to Impair Obligation of Contract under the Conditions Stated—Requirement of Military Training in State University not in Conflict with Fourteenth Amendment—Sufficiency of Indictment under Section 146(b) of 1928 Revenue Act—Review of Decision of State Court Involving Federal Question—Within Constitutional Power of Congress to Confer Exclusive Jurisdiction on United StatesDistrict Courts, Sitting in Admiralty, for Foreclosure of Mortgages on Ships Made and Recorded as Provided in the Act

By Edgar Bronson Tolman*

Constitutional Law—State Statutes—Impairment of Obligation of Contract

The Maryland statute of 1933 amending the Act of 1898 relative to summary foreclosure of mortgages, and providing that the remedies theretofore in force shall not be available to mortgagees unless the decree of foreclosure is concurred in by record holders of not less than 25% of the entire unpaid mortgage debt, does not impair the obligation of a contract, where the mortgage sought to be foreclosed by the holder of less than 25% of the debt contained a provision whereby the mortgagor assented to a decree under the Act of 1898, "or any amendments or additions thereto."

United States Mortgage Co. v. Matthews, 79 U. S. Adv. Op. 191; 55 Sup. Ct. Rep., 168.

This case dealt with the validity of a statute of Maryland enacted in 1933 adding a new section to the statutory provisions affording summary and ex-parte remedies for the enforcement of mortgages. A statute, being Chapter 123, Sec. 720 of the Maryland laws, 1898, provided for the entry of a decree directing sale of the mortgaged property at any one of the periods limited in the conveyance for the forfeiture of the mortgage or limited for default of the mortgage on application of the mortgagee to a Circuit Court of Baltimore City, if the mortgage contained a provision consenting to such decree. This statute, as previously construed, entitled the owner of part of a mortgage to the remedies afforded by the law. The respondents, under an assignment of the Mortgage Guarantee Company, owned an undivided 500/2950 interest in a mortgage on real estate given by one Warner. The mortgage contained a provision assenting to the passing of a decree under the statute of 1898, "or any amendments or additions thereto."

The mortgage was executed in 1925, and no amendment to the provisions of the act of 1898 was enacted until the passage of the challenged provisions of the act of 1933. The latter provides that:

> In all cases submitted to either of the Circuit Courts of Baltimore City for the passage of a decree as provided for in Section 720 aforesaid, no such decree shall hereafter be passed during the period of emergency hereinafter declared, unless such application is made or concurred in by the record holders of not less than 25% of the entire unpaid mortgage debt, it being hereby declared to be the intent of this Section during the period this Section is effective, that the holder or holders of a fractional interest in an entire mortgage debt of less than 25% of the entire interest, shall not have recourse to the summary and exparte remedies given under Section 720.

The respondents sought a decree of sale of the mortgaged property under Sec. 720. The United States Mortgage Company, owner of the equity of redemption, and Mortgage Guarantee Company, the holder or representative of approximately 83% of the unpaid mortgage debt, intervened and opposed the passing of the decree, relying on the Act of 1933. The respondents amended their petition alleging the invalidity of that statute under Section 10, Article I of the Federal Constitution and the Fourteenth Amendment, as well as under the State Constitution.

The Maryland Court of Appeals held that the Act of 1933 did not violate the Fourteenth Amendment, but concluded that it was violative of the contract clause. It further ruled that the consent contained in the mortgage to any amendments or additions to the Act of 1898 did not include amendments or additions enacted subsequent to the mortgage.

On certiorari the Supreme Court reversed the judgment in an opinion by Mr. Justice McReynolds. He first expressed approval of the ruling under review so far as it held the Act of 1933 valid under the Fourteenth Amendment, and said:

> We agree that Chapter 56 does not offend the 14th Amendment by denying equal protection of the laws, and accept the reasons given to support that view—"The classification thus made would seem clearly to have direct relation to the purpose which the Legislature had in mind, and which we cannot say was arbitrary or fanciful."

Upon examination of the mortgage agreement, however, the Court concluded that the consent contained therein embraced amendments enacted subsequent to the mortgage, and that enforcement of the Act of 1933 did not violate the clause forbidding the impairment of contracts by the states. As to this the opinion states:

> We cannot sanction the conclusion of the Court of Appeals on this point. The assent set forth in the mortgage was "to the passing of a decree . . . for a sale of the property hereby mortgaged in accordance with Sections 720 to 732 inclusive of Chap. 123 of the laws of Maryland passed at the January session 1898 or any amendments or additions thereto." Prior to the mortgage there had been no such amendment or addition, and it cannot, we think, be correctly said that "the intention of the parties in employing that language embraced only such amendments or additions as had been made prior to the execution of the mortgage."

*Assisted by James L. Homire

> On the contrary, the words employed seem to us sufficient to embrace the amendments and additions thereafter made by Chapter 56. A contrary holding would deprive the words employed of their customary meaning. And we find nothing which requires us to accept any other meaning.
>
> It follows that the challenged Act cannot properly be said to impair the obligation of the agreement between the parties within the meaning of the Federal Constitution.

The case was argued by Messrs. James Thomas and William L. Marbury, Jr., for the petitioners and by Messrs. Charles F. Stein, Jr., and Frederick H. Hennighausen for the respondents.

Constitutional Law—Due Process—Religious Liberty—Military Training

The requirement of a state university that able bodied male students shall take prescribed courses in military training, as a condition attached to the privilege of attending the university, despite their conscientious or religious scruples against war, is valid and not in conflict with the provisions of the Fourteenth Amendment.

Hamilton et al v. Regents of the University of California, 79 Adv. Op. 159; 55 Sup. Ct. Rep. 197.

This case involved consideration of the power of a state to require students to submit to instruction in military science as a condition to attendance at the state university. The appellants are two minors and their guardians *ad litem*. The minors were students in the University of California, and were suspended from that institution solely upon the ground that they declined to take the courses in military training prescribed by the University. The minors are members of the Methodist Episcopal Church and of the Epworth League, and their fathers ministers of that Church. The governing authorities of the Methodist Church adopted resolutions requesting exemption from military training of all student members of the Church who had conscientious scruples against such training. By these resolutions the Methodist Church gave its support to its members who are conscientious objectors to war. The students sought exemption from military training on the ground of their religious and conscientious objection to war and to military training. Their petition was denied.

Later the students were suspended from the University for their refusal to take the courses in military training. They then sued in the California Supreme Court for a writ of mandate compelling the appellees, regents of the University, to admit them as students. The state court denied the writ. On appeal the ruling was affirmed by the Supreme Court in an opinion by MR. JUSTICE BUTLER.

In considering the case he first adverted to the status of the University as a land grant college, which had received a donation of lands under the Act of Congress known as the Morrill Act. The courses in military training are given by the University in performance of conditions attached to the land grant, but no question was involved as to whether the State has bound itself to require students to take the training. The appellants asserted that the requirement to take military training is repugnant to the privileges and immunities clause and to the due process clause of the Fourteenth Amendment, and also to the Briand-Kellogg Peace Pact.

Dealing with the first of these contentions, MR. JUSTICE BUTLER stated that the claimed immunity from military service is not distinguishable from "liberty" within the meaning of the due process clause.

An examination of the due process clause in its relation to the case led to the conclusion that that provision does not confer the right to be students in the state university free from the obligation to submit to military training. In this connection the opinion states:

> There need be no attempt to enumerate or comprehensively to define what is included in the "liberty" protected by the due process clause. Undoubtedly it does include the right to entertain the beliefs, to adhere to the principles and to teach the doctrines on which these students base their objections to the order prescribing military training. . . .The fact that they are able to pay their way in this university but not in any other institution in California is without significance upon any constitutional or other question here involved. California has not drafted or called them to attend the university. They are seeking education offered by the State and at the same time insisting that they be excluded from the prescribed course solely upon grounds of their religious beliefs and conscientious objections to war, preparation for war and military education. Taken on the basis of the facts alleged in the petition, appellants' contentions amount to no more than an assertion that the due process clause of the Fourteenth Amendment as a safeguard of "liberty" confers the right to be students in the state university free from obligation to take military training as one of the conditions of attendance.
>
> Viewed in the light of our decisions that proposition must at once be put aside as untenable.
>
> Government, federal and state, each in its own sphere owes a duty to the people within its jurisdiction to preserve itself in adequate strength to maintain peace and order and to assure the just enforcement of law. And every citizen owes the reciprocal duty, according to his capacity, to support and defend government against all enemies.

In support of this conclusion, the *Selective Draft Law Cases*, *United States v. Schwimmer*, and *United States v. MacIntosh* were referred to. In conclusion, the appellants' contention based on the Briand-Kellogg Peace Pact was briefly considered. In regard to this, MR. JUSTICE BUTLER said:

> The contention that the regents' order is repugnant to the Briand-Kellogg Peace Pact requires little consideration. In that instrument the United States and the other high contracting parties declare that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations with one another and agree that the settlement or solution of all disputes or conflicts which may arise among them shall never be sought except by pacific means. Clearly there is no conflict between the regents' order and the provisions of this treaty.

MR. JUSTICE CARDOZO concurred in the opinion with a brief additional comment. He pointed out that, assuming that the Fourteenth Amendment operating on the states includes the religious liberty protected by the First Amendment operating on the federal government, there was no showing that the military training requirement was an obstruction to the free exercise of religion. As to this he said:

> There is no occasion at this time to mark the limits of governmental power in the exaction of military service when the nation is at peace. The petitioners have not been required to bear arms for any hostile purpose, offensive or defensive, either now or in the future. They have not even been required in any absolute or peremptory way to join in courses of instruction that will fit them to bear arms. If they elect to resort to an institution for higher education maintained with the state's moneys, then and only then they are commanded to follow courses of instruction believed by the state to be vital to its welfare. This may be condemned by some as unwise or illiberal or unfair when there is violence to conscientious scruples, either religious or merely ethical. More must be shown to set the ordinance at naught. In controversies of this order courts do not concern themselves with matters of legislative policy, unrelated to privileges or liberties secured by the organic law. The First Amendment, if it be read into the Fourteenth, makes invalid any state law "respecting an establishment of religion or prohibiting the free exercise thereof." Instruction in military science is not instruction in the practice or tenets of a religion. Neither directly nor indirectly is government establishing a state religion

when it insists upon such training. Instruction in military science, unaccompanied here by any pledge of military service, is not an interference by the state with the free exercise of religion when the liberties of the constitution are read in the light of a century and a half of history during days of peace and war.

As an illustration of the historic conception of religious liberty in connection with military training it was pointed out that Quakers and other conscientious objectors have been exempted from military service as an act of grace, and often on condition that they supply the army with a substitute, or with money to hire one. In conclusion MR. JUSTICE CARDOZO said:

> . . . For one opposed to force, the affront to conscience must be greater in furnishing men and money wherewith to wage a pending contest than in studying military science without the duty or the pledge of service. Never in our history has the notion been accepted, or even, it is believed, advanced, that acts thus indirectly related to service in the camp or field are so tied to the practice of religion as to be exempt, in law or in morals, from regulation by the state. On the contrary, the very lawmakers who were willing to give release from warlike acts had no thought that they were doing anything inconsistent with the moral claims of an objector, still less with his constitutional immunities, in coupling the exemption with these collateral conditions.
>
> Manifestly a different doctrine would carry us to lengths that have never yet been dreamed of. The conscientious objector, if his liberties were to be thus extended, might refuse to contribute taxes in furtherance of a war, whether for attack or for defense, or in furtherance of any other end condemned by his conscience as irreligious or immoral. The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government. One who is a martyr to a principle—which may turn out in the end to be a delusion or an error—does not prove by his martyrdom that he has kept within the law.

MR. JUSTICE BRANDEIS and MR. JUSTICE STONE joined in MR. JUSTICE CARDOZO'S opinion.

The case was argued by Mr. John Beardsley for the appellants and by Mr. John U. Calkins, Jr., for the appelles.

Criminal Law—Wilful Attempt to Evade Payment of Income Tax

Under Section 146 (b) of the Revenue Act of 1928 any person who wilfully attempts to evade or defeat any tax levied under the Act is guilty of felony. An indictment charging an officer of a corporation with filing a false return for the Corporation is not defective for failure to allege that such officer was under a duty to make the return.

United States v. Troy, 79 Adv. Op. 60; 55 Sup. Ct. Rep., p. 23.

In this opinion, by MR. JUSTICE MCREYNOLDS, the Court considered the sufficiency of an indictment charging the appellee with wilfully attempting to defeat and evade a large part of the income tax due from the corporation, of which the appellee was president, by making a return of such corporation which falsely stated the gross income. The Revenue Act of 1928, for violation of which the indictment was found, provides in Section 146 (b) that any person who wilfully fails to collect or truthfully account for and pay over any tax, and any person who wilfully attempts to evade or defeat any tax shall be guilty of a felony. Section 146 (c) provides that "the term 'person' as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

Section 701 provides that "When used in this Act the term 'person' means an individual, a trust or estate, a partnership, or a corporation"; and that "the terms 'includes' and 'including' when used in a definition in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined."

The trial court quashed the indictment on the ground that it failed to allege that the appellee was under any duty to perform the act in respect of which the indictment occurred. Holding this ruling error, and reversing the judgment, the Court marks the statutory distinction between penalty for failing to make a return and penalty for wilfully attempting to evade or defeat a tax. In this connection MR. JUSTICE MCREYNOLDS said:

> Section 146 (a) penalizes any person required to make a return, who wilfully fails so to do; paragraph (b) any person under duty to collect, account for, and pay over any tax, who wilfully fails, also any person (without regard to duty) who wilfully attempts to defeat the tax; and paragraph (c) declares that the term person as used in the section shall include an officer under duty to perform etc.
>
> Considering these paragraphs along with the definitions of Sec. 701, it seems sufficiently clear Congress did not intend that paragraph (c) should exclude from paragraph (b) one who actually attempted to defeat. If the charge against appellee had been failure to make return, or pay over the tax for the corporation it might have been necessary to allege and show some duty in respect thereto; but when charged with wilful effort to defeat the tax by presenting a false return no allegation of duty to make the return was necessary. The alleged act sufficiently indicated appellee's criminal intent. Certainly we can find no legislative purpose to exempt from punishment one who actively endeavors to defeat a tax. And because some officers are said to be included in the terms "person," all other individuals are not necessarily excluded.
>
> Thus construed, all parts of the statute may have effect, and the manifest purpose of Congress will not be obstructed.

The case was argued by Assistant Attorney Wideman for the Government, and by Mr. Joseph F. Gunster for the appellee.

Practice on Appeal—Review of Decision of State Courts Involving Federal Question

The Supreme Court will not take jurisdiction of a case to review the decision of a state court, unless it affirmatively appears from the record that a federal question was presented to the highest court of the state for determination, that decision of such question was necessary to determination of the cause, and that it was actually decided or that judgment could not have been given without deciding it.

Lynch et al v. New York ex rel. Pierson, 79 Adv. Op. 1; Sup. Ct. Rep. Vol. 55, p. 16.

This opinion discussed the rule requiring an affirmative showing of record that a federal question was presented and was necessarily decided in the state court, in order to confer jurisdiction of the Supreme Court to review the decision of the state court. In the instant case the state courts had annulled a determination of the New York State Tax Commission that rent from real estate in Ohio was taxable income in computing the respondent's income tax under New York law. It appeared not unlikely that the state court intended to rest its decision on a determination of the application of the Fourteenth Amendment, although the respondent had asserted her rights under both the State and Federal Constitutions.

Holding that it is necessary that the record show that a federal question has been necessarily decided in order to sustain jurisdiction of the Supreme Court to review the decision, MR. CHIEF JUSTICE HUGHES said:

> It is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear

affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it. . . . Where the judgment of the state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction. . . .

Petitioners have made no effort to obtain an amendment by the Court of Appeals of its remittitur, and although, on the oral argument in this Court, attention was directed to the practice in New York to entertain, in proper cases, an application for such an amendment in order to show appropriately the basis of the determination of the state court, no request was made for a continuance to permit such an application.

As the record fails to show jurisdiction in this Court, the writ of certiorari is dismissed as improvidently granted.

The case was argued by Mr. Joseph M. Mesnig for the petitioners and by Mr. C. P. Williamson for the respondent.

Maritime Law—Foreclosure of Ship Mortgages in Admiralty—Scope and Validity of Ship Mortgage Act

The ship Mortgage Act confers exclusive jurisdiction on the district courts of the United States, sitting in admiralty, for foreclosure of mortgages on ships made and recorded as provided in that Act, including foreclosure of ship mortgages given to secure loans for non-maritime purposes.

It is within the constitutional power of Congress to confer such exclusive jurisdiction on the district courts.

Detroit Trust Co. v. Steamer "Thomas Barlum," 79 Adv. Op. 36; 55 Sup. Ct. Rep., p. 31.

This opinion dealt with the scope and validity of the Ship Mortgage Act, 1920. Two vessels, "Thomas Barlum" and "John J. Barlum" were subjected to mortgages duly recorded as provided in the Act. Bonds issued under both mortgages were purchased by the petitioner with the understanding that a large portion of the proceeds was to be used for non-maritime purposes unrelated to the operation of the vessels. The bonds were purchased for sale to the public, and were largely so sold.

In libel proceedings to foreclose the mortgages the respondent contended that the mortgages were so devoid of connection with maritime purposes that the provision of the Ship Mortgage Act conferring jurisdiction in admiralty "either does not, or cannot constitutionally apply."

The District Court took jurisdiction in admiralty and decreed foreclosure and sale of the vessels. The Circuit Court of Appeals reversed, by divided bench, the majority holding that the suits should have been dismissed for want of jurisdiction. On certiorari the decree of the Court of Appeals was reversed, in an opinion by MR. CHIEF JUSTICE HUGHES.

The two principal questions dealt with in the opinion are the application of the statute, and the validity of the grant of jurisdiction.

As to the first question, a review of the statutory provisions led to the conclusion that the mortgages, duly recorded and meeting all the formal requirements of the statute, are within its application, and are preferred mortgages irrespective of the application of the proceeds of the bonds issued under them. In this connection the opinion points out that the Act imposes no condition as to the purposes for which the moneys are lent.

> An examination of the provisions of the Act leaves no room for doubt that the subject of mortgages of vessels, and, in particular, the priority which should be assigned to them in relation to other liens, was under the close scrutiny of the Congress in determining its policy. But, among all the minute requirements of the Act, we find none as to the application of the proceeds of loans which such mortgages secure. No condition is imposed as to the purposes for which the moneys are lent. While the Congress took care to make distinct provision for cases where a mortgage covers property other than a vessel, no distinction is made as to the status of mortgages of vessels by reason of an intention to devote the borrowed moneys to uses other than maritime. We are not at liberty to imply a condition which is opposed to the explicit terms of the statute. It is enough, so the statute says expressly, that the mortgage is upon a vessel of the United States, that it is a valid mortgage, that it is made in good faith, that it is disclosed by proper indorsements on the vessel's documents and is duly recorded, and that the other conditions, specified in detail, are met. Such a mortgage upon a vessel documented under the laws of the United States, the Congress has undertaken to regulate with respect to priority of lien. If the conditions so laid down are fulfilled, the mortgage is to be a "preferred mortgage" with all the incidents which the Act attaches to it, including the right to bring foreclosure in admiralty. To hold that a mortgage is not within the Act which the Act itself states is within it, is not to construe the Act but to amend it. The question of policy—whether different terms should have been imposed—is not for us. We may not add to the conditions set up by Congress any more than we can subtract from them. They stand, as defined, precise and complete.

The purpose of Congress in enacting the Act was adverted to in support of the interpretation placed on its provisions. It was pointed out that, as part of the Merchant Marine Act, 1920, the purpose was to provide for the promotion and maintenance of the American merchant marine; and that it was intended to strengthen the position of securities on ships. The contrary effect of requiring purchasers to be at the peril of discovering the application of proceeds of bonds was emphasized. As to this MR. CHIEF JUSTICE HUGHES said:

> In placing ship mortgages upon a stronger basis as securities, the Congress had in mind, and expressly included, trust deeds securing issues of bonds to the public. . . . It is plain that the fundamental purpose to promote public confidence in such securities, and their extended use as investments, would have been frustrated if purchasers of bonds had to discover at their peril the application of the proceeds of the secured loans, or if their rights depended upon such knowledge as their trustee might have, rather than upon the satisfaction of the statutory conditions and the disclosures, as required, by indorsement on the vessel's documents and recording. But, while contemplating such bond issues, with their obvious practical incidents, the Congress did not set up a special rule for them, or for purchasers of bonds without notice as to the application of proceeds. The Congress made simple, clear and definite conditions as to all ship mortgages otherwise valid, and when these were performed the mortgages were to have the status prescribed.

The analogy of the rules with respect to bottomry and respondentia bonds was also recognized.

In concluding discussion of this phase of the case the Court mentioned the fact that exclusive jurisdiction was granted to admiralty, and that there was no doubt that Congress intended to base jurisdiction on precise statutory conditions, rather than to leave it to be tested by extrinsic criteria.

As to the question of federal power, it was first observed that Congress rested its authority on the constitutional provisions extending judicial power "to all cases of admiralty and maritime jurisdiction", and conferring on Congress power to make all laws "necessary and proper" for carrying out all powers vested "in the

government of the United States, or in any department or officer thereof." But the grant of constitutional power was not limited to cases of admiralty and maritime jurisdiction as they existed in England when the Constitution was adopted. Discussing the extent of the grant of power, the Court said:

> This authority was not confined to the cases of admiralty and maritime jurisdiction in England when the Constitution was adopted. . . . The limitations which had been imposed upon the high court of admiralty in the course of its controversy with the courts of common law were not read into the grant. But the grant presupposed a "general system of maritime law" which was familiar to the lawyers and statesmen of the country, and contemplated a body of law with uniform operation. . . . . The Constitution did not undertake to define the precise limits of that body of law or to lay down a criterion for drawing the boundary between maritime law and local law. . . . Boundaries were to be determined in the exercise of the judicial power in recognition of the purpose of the grant. "No state law can enlarge it, nor can an act of Congress or rule of court make it broader than the judicial power may determine to be its true limits." . . . The framers of the Constitution did not contemplate that the maritime law should remain unalterable. The purpose was to place the entire subject, including its substantive as well as its procedural features, under national control. From the beginning the grant was regarded as implicitly investing legislative power for that purpose in the United States. When the Constitution was adopted, the existing maritime law became the law of the United States "subject to power in Congress to modify or supplement it as experience or changing conditions might require." . . . The Congress thus has paramount power to determine the maritime law which shall prevail throughout the country. . . . But in amending and revising the maritime law, the Congress necessarily acts within a sphere restricted by the concept of the admiralty and maritime jurisdiction.

Following an historical review of the exercise of power in relation to admiralty and maritime jurisdiction, the learned Chief Justice referred to *Bogart v. The Steamboat John Jay*, 17 Howard 399, in which it was held that admiralty had no jurisdiction to enforce payment of a mortgage on a vessel. The opinion in that case, recognizing that the admiralty jurisdiction was more extensive in England, had observed that a more limited jurisdiction must prevail in this country until enlarged by Congress. Emphasizing the importance of this suggestion as illustrative of the constitutional authority of Congress to alter the maritime law, the Chief Justice said:

> The significance of this suggestion cannot be overlooked. The fact that mortgages on ships had not been considered to be maritime contracts was not conclusive as to the constitutional authority of the Congress to alter or supplement the maritime law in this respect, and thus to extend the admiralty jurisdiction, "as experience or changing conditions might require," while keeping within a proper conception of maritime concerns. The ship, documented under the laws of the United States, is the instrumentality of our maritime enterprise, the prime object of our maritime policy. The ship "from the moment her keel touches the water" becomes "a subject of admiralty jurisdiction"; she acquires personality; she becomes competent to contract, is individually liable for her obligations, and is responsible for her torts. . . . The existence of the ship, the investments which make that existence possible, is the necessary postulate of maritime liens. We cannot fail to regard the encouragement of investments "in shipping and shipping securities"—the objective of the Ship Mortgage Act—as an essential prerogative of the Congress in the exercise of its wide discretion as to the appropriate development of the maritime law of the country. The regulation of the priorities of ship mortgages in relation to other liens, and the conferring of jurisdiction in admiralty in order to enforce this regulation, are appropriate means to that legitimate end.

In conclusion, the Court called attention to the fact that it is established that Congress has power to determine the priorities which shall be recognized in admiralty, and, having this power, it may fix the conditions on which mortgages on ships documented under the laws of the United States shall have the specified priority. Having in mind the purpose of Congress to establish the worth of shipping securities in the interest of the merchant marine, the constitutional validity of the Act was thought sufficiently clear. In the language of the opinion,

> In order to create public confidence in such securities, in obligations issued on the faith of ship mortgages, the Congress deemed it necessary, not to hamper their issue or enforcement by compelling inquiries as to the application of loans, but to give a definite and assured character to such mortgages provided they met certain simple conditions. The Congress in the exercise of its discretion was entitled to consider the methods by which securities are issued to the public and dealt in, and the well-known usages of business in this regard amply support its judgment.
>
> The authority of the Congress to enact legislation of this nature was not limited by previous decisions as to the extent of the admiralty jurisdiction. We have had abundant reason to realize that our experience and new conditions give rise to new conceptions of maritime concerns.

The case was argued by Mr. Ray M. Stanley for the petitioner, and by Mr. George E. Brand for the respondent.

Arrangements for Annual Meeting at Los Angeles July 15 to 19, inc., 1935

HEADQUARTERS: BILTMORE HOTEL

Hotel accommodations, all with bath, are available as follows:

	Single for one person	Double (Dble. bed for two persons)	Twin beds for two persons	Parlor Suites
Biltmore	$3.50 to $6.00	$5.00 to $7.00	$5 to $ 9	$10, 12, 15
Ambassador	5.00 to 7.00		7 to 11	18 to 23
Clark	2.50 to 3.00	3.50 to 4.00		7 to 15
Hayward	2.00 to 5.00	3.00 to 7.00		
Mayfair	2.50	3.50	4.00 to 5.00	
Mayflower	2.50 to 3.50	2.50 to 3.50		
Rosslyn	2.50	3.50	4 & 5	10
Savoy	2.50 to 3.50	2.50 to 3.50		

Explanation of Type of Rooms

A single room contains either a single or double bed to be occupied by *one* person. A double room contains a double bed to be occupied by *two* persons.

A twin-bed room contains two beds to be occupied by two persons. A twin-bed room will not be assigned for occupancy by one person.

A parlor suite consists of parlor and communicating bedroom containing double or twin beds. Additional bedrooms may be had in connection with parlor.

To avoid unnecessary correspondence, members are requested to be specific in making requests for reservations, stating hotel desired, number of rooms required and rate therefor, names of persons who will occupy the same, and arrival date, including definite information as to whether such arrival will be in the morning or evening.

Reservations should be made as early as possible. Requests should be addressed to the Executive Secretary, 1140 North Dearborn Street, Chicago, Illinois.

DEVELOPMENT OF A CO-ORDINATION PLAN

COORDINATION of the bar by a plan which will be acceptable to the lawyers of the country waits on a closer working union between state and local groups and the American Bar Association. The need for a means by which the lawyers of the United States can express themselves nationally on problems with which their profession is particularly concerned has long been recognized. It should be clearly understood that statements of the necessity for an organization which will truly represent and speak for the bar of the entire country are not in the nature of special pleading for the American Bar Association. There is no denying that the profession will be more effective in its effort to improve the administration of justice on all fronts if it is more closely knit together, if there is a national clearing house of experience and ideas and if there is an agency for a national expression of opinion.

The Coordination Committee of the American Bar Association had all this in mind when it advocated the adoption of a National Bar Program which would provide a common meeting ground for all bar organizations and would make for a closer association between them. The idea has received the unqualified approval of active bar associations in every part of the country and is being carried forward with energy. In the meantime it is not being forgotten that eventually, machinery must be built which will fullfill the requirement of uniting the entire profession so that the opinion of state and local bars will have an opportunity for reflection in the national organization. Some bar associations have appointed committees to propose plans by which this can be brought about and the Coordination Committee has been asking the opinion of a few representative lawyers about it. Any bar association interested in working out proposals for some type of formal connection between local regional, state and national organizations, is invited to submit their project to the Coordination Committee.

Work on the subjects of the National Bar Program is proceeding actively. By the printing of a monthly bulletin, the first issue of which was published in December, the Committee on Unauthorized Practice of the American Bar Association hopes to stimulate effective work on that topic. The Association is making available the proceedings of the meeting held in Cincinnati in October, where the selection and tenure of judges was discussed at a well organized and important conference, and Judicial Selection Committees will thus be given the opportunity of seeing a new and interesting method of approach to this subject. By means of a survey of methods of disciplinary procedure now in use in the 48 states and the District of Columbia, grievance committees will be furnished with an assortment of yard sticks by which their own procedure can be measured.

Crime Conference Adopts Criminal Procedure Recommendations

In the field of Criminal Law and Its Enforcement, an important recent event was the Attorney General's Conference on Crime held in Washington December 10-13, which is extensively reported elsewhere in this issue of the JOURNAL. The great majority of the state bar associations and many locals were represented there, and the American Bar Association appointed a delegation of 17, all of whom attended. The importance of the lawyer in this field and his responsibility in solving the crime problem was most convincingly demonstrated by the fact that out of 600 accredited delegates more than 200 were lawyers. The results achieved were important. 110 resolutions were presented to the Resolutions Committee containing recommendations on all subjects which were discussed in the fifty odd addresses on the program, and on some which were not. Among those to emerge from this mass of ideas was resolution No. 7, embodying the criminal procedure recommendations passed by the American Bar Association at its Milwaukee meeting, recommending the American Law Institute Code and specifically advocating:

(1) Right of waiver of jury trial,
(2) Empanelling of alternate jurors,
(3) Trial upon information as well as indictment,
(4) Non-unanimous jury verdicts in certain criminal cases,
(5) Advance notice of alibi or insanity defense, and
(6) Comment on defendant's failure to testify.

In addition, this resolution recommended that legislative committees on Criminal Law and Its Enforcement be appointed and that the American Legislators' Association cooperate with these committees.

The preamble of this resolution stated that "the Attorney General's Conference on Crime believes that the time is ripe for securing a substantial improvement in criminal procedure." This is a fact which should be driven home to all bar association committees working on the subject. Plans for procedural reform in this field, if submitted to the 44 legislatures which meet in 1935, should have clearer sailing than ever before, and, therefore, every effort should be made to see that a carefully worked out program is presented in every state where the need exists.

Another resolution declared for closer cooperation between federal, state, county and local authorities without in any way infringing on state sovereignty. The State Department of Justice recommendation of the American Bar Association was suggested as a possible means of carrying this out in the following language from resolution No. 3:

"It is recommended that the various states give serious consideration to a better form of coordinated control by means of a state department of justice or otherwise."

These recommendations by a body of experts should lend considerable force to the criminal law proposals endorsed by the American Bar Association on which state and local bar association committees are now working.

WILL SHAFROTH,
Assistant to the President.

ALL ABOARD FOR THE LOS ANGELES MEETING!

THE Committee on Arrangements for the Los Angeles Meeting has made tentative plans for a special train or trains to Los Angeles and return which will make it possible for members of the Association living in the East, South and Middle West to join their friends on the trip to the West Coast and return, and enjoy with them some of the scenic beauty and points of interest which cannot be viewed on the regular schedule. While detailed plans have not been completed, and are not ready for announcement at this time, in general the tour will include Colorado Springs (Pike's Peak, Cheyenne Mountain, the Garden of the Gods and other surrounding beauty spots); the Royal Gorge, Salt Lake City, and Boulder Dam on the Westbound journey, and then after approximately ten days in Los Angeles, Yosemite National Park, Redwood Forest, San Francisco, Grant's Pass, the Columbia River country, and then East from the North Pacific Coast through one or both of the best known of the National Parks,—Glacier and Yellowstone.

In the event that the number of persons making up the party is not sufficient to divide into two groups, one to visit Glacier and the other Yellowstone, on the homeward journey, the route east from the Coast will be determined on the basis of the preference expressed by the majority intending to take the trip.

Time Required to Make the Trip

The schedule above outlined contemplates departure from Chicago at 11:30 A. M. on Wednesday morning, July 10, on the Chicago, Burlington and Quincy Railroad; arrival at Colorado Springs at 2:00 P. M., July 11th; departure on the Denver and Rio Grande Railroad at 3:30 P. M., July 12th; arrival at Salt Lake City at 1:30 A. M., July 13th; departure at 5:00 P. M., July 13th on the Union Pacific Railroad; stopover at Boulder Dam for 3 to 4 hours on Sunday morning, July 14th, and arrival in Los Angeles the same evening at 8:30 o'clock.

The sessions of the Association and its Sections will occupy the entire time from Monday morning, July 15th, to Friday, July 19th, and during that time and on Saturday, July 20th, members of the party, with other members of the Association will enjoy the hospitality of the Los Angeles Bar Association and the State Bar of California.

Departure from Los Angeles will probably be on Monday evening, July 22, thus giving the members of the party two or three days after the close of the meeting to visit points of interest in southern California, arrangements for which may be made after arrival in Los Angeles.

The return trip will occupy approximately ten days, most of which time will be spent in the National Parks and sight-seeing.

Equipment

First class Pullman equipment, with adequate dining, lounge and observation cars will be available throughout the trip. Service required for the comfort and convenience of members of the party will be supplied. All tickets and hotel reservations other than at Los Angeles, will be arranged for, including arrangements for sight-seeing trips at places where the party will stop.

Entertainment

Motor trips, hikes, horse-back rides, luncheons, dinners and musical entertainment will be arranged for. The program, however, will be so planned as to leave a sufficient margin of time for rest and such recreation as each member of the party may prefer.

Reservations

Requests for reservations or for more detailed information should be addressed to the American Bar Association, 1140 North Dearborn Street, Chicago. The Committee on Arrangements will have available the services of the Tour Department of the Chicago, Burlington and Quincy Railroad, and all inquiries will be promptly answered.

Expenses of the Trip

The Committee has endeavored to make such plans as would call for the least possible expense to the individual traveler, and to this end has included in the expense of the trip every item considered necessary. The rates quoted include round trip railroad fare from Chicago to Los Angeles and return, Pullman fare, all meals on trains and during stop-overs, automobile trips, Park tours, and incidental sight-seeing. They do not include hotel or other expenses in Los Angeles or gratuities throughout the trip.

Exact rates cannot be announced until the return route (whether by Glacier Park or Yellowstone Park) is definitely decided upon, but at this time it can be stated that the total expense will be approximately from $260 to $315 per person, depending upon the type of Pullman space reserved. Tickets from points other than Chicago can be purchased and routed so as to give the purchaser the benefit of the round-trip railroad fare from the point of departure to Los Angeles.

Final Plans for the Trip

To enable the Committee to make final and complete plans, members interested in a special train are requested to send to the Chicago office answers to the following questions:

1. Will you go to Los Angeles on special train?
2. Will you return on the special train?
3. If you do not go with party on westbound trip, will you join it for the return trip.
4. Please state your preference,—Glacier Park or Yellowstone Park.
5. Are you interested in a trip to San Diego and Agua Caliente over week-end following close of Annual Meeting?

An Invitation to Visit Hawaii

An invitation has been extended on behalf of the people of the Territory of Hawaii, by Hon. Joseph B. Poindexter, Governor of Hawaii, and on behalf of the Bar Association of Hawaii, by Hon. R. A. Vitousek, Acting President, to the members of the American Bar Association and their families, to visit the Hawaiian Islands following the Annual Meeting in Los Angeles. The invitation so cordially

and graciously extended will be accepted by the Executive Committee in the event that a sufficient number of members of the Association express a desire to make the trip. Members interested in this opportunity to visit Hawaii are requested to communicate with the Executive Secretary, 1140 N. Dearborn Street, Chicago. The response to this announcement should be reasonably prompt, as the invitations of Governor Poindexter and the Acting President of the Bar Association of Hawaii will be considered and acted upon by the Executive Committee at the Midwinter Meeting which will be held on January 29-31, 1935.

The Matson Line, which operates steamers between San Francisco and Los Angeles and Honolulu, has submitted a number of suggested itineraries for trips varying in length from 11 days to 19 days. The minimum cost for round trip steamer fare is $220. All trips to Hawaii include ten days at sea, five going and five returning.

CURRENT LEGAL LITERATURE

A Department Devoted to Recent Books in Law and Neighboring Fields and to Brief Mention of Interesting and Significant Contributions Appearing in the Current Legal Periodicals

Among Recent Books

DEPRECIATION; A Review of Legal and Accounting Principles. By Public Service Commission of Wisconsin. 1934. New York: State Law Publishing Company. Pp. xi, 196. The attempt of the Public Service Commission of Wisconsin to cast light on the subject of depreciation is indeed welcome at this time. For, with attention in the depression directed toward greater accounting accuracy with respect to depreciation, and with the Interstate Commerce Commission's recent prescription of depreciation accounting for steam railroad way and structures, the introduction of order in the chaos of state commission regulation of utility depreciation accounting is justly commendable.

While the Wisconsin commission's study introduces no new material to aid in solving the depreciation mystery, its analysis of existing legal and accounting principles makes the work a distinct contribution. The attempt of the staff of the commission to get down to simple principles as respects the concept of depreciation and accounting for the expense of depreciation is noteworthy, as is its historical treatment of the legal doctrines of depreciation. But it is precisely in the attempt for simplicity and practicability that the commission's treatment is open to some question. For example, one of the most controversial aspects of the depreciation question is the matter of the base. The almost unqualified support given original cost as the basis for computing the annual allowances may well be attacked. Not that the Baltimore Railways Case, as the report indicates, laid down the rule that "replacement costs must determine the depreciation base" (p. 130). All that the court held in that case was that a utility has the right to have the present value test applied in determining the basis for annual depreciation allowances. It is quite conceivable that an original cost basis might meet this test in certain periods. The staff's tenacious adherence to original cost as a "fact," as against an "imaginary" basis, is somewhat delusory. All that the original cost basis can guarantee is an annual allowance based on dollars, regardless of the vagaries of the price level. Since capital invested in a utility industry is more or less of a permanently embarked nature, merit lies in a system of depreciation accounting which charges off as a cost the capital consumed, rather than a fixed dollar amount.

The review of legal and accounting principles of depreciation is admirable for so short a work. The legal analysis of accrued depreciation and valuation is especially good. The stand taken in favor of depreciation reserve accounting seems to be a good step in the direction of accounting accuracy, though uncertainties due to the factor of obsolescence do not seem to be given adequate weight.

One general criticism might be made. The economic aspects of depreciation are scarcely touched. Since depreciation is basically a cost arising from the loss of value, a more thorough study of the economic implications of value might well have been undertaken.

In spite of criticism which may be directed against the report, the clarity of the work, along with its conciseness, commands the book especially to those interested in the regulatory aspects of the public utility depreciation question.

HAROLD D. KOONTZ.

University of Toledo.

The Law of England at the Norman Conquest, by George W. Rightmire. 1932. Columbus, Ohio: The F. J. Heer Printing Co. Pp. 188. This little book carries on the work of Attenborough and Robertson in making available modern English translations of the English law that lies behind what we know as the common law. It is built around excellent translations of the Latin text of the law-book which bears the Conqueror's name, and of the ordeal forms which enter into the trials of the actions discussed in the law-book. The title of the volume is somewhat misleading, for the law-book itself contains legislation of at least

twenty years later than the Conquest, its original French text was written at least another fifteen years later still, and the Latin version from which this translation is taken dates from almost a century after the Conquest and contains only vestiges of the law of the period of the Conquest.

Since so little is known about English law under the Norman kings that the turn of every phrase in the law books is precious, the translation, however good, is of small use for scholarly purposes. The chief value of the book lies in the extended introductory commentary, which forms a handy rehash of the standard learning, thus often sparing the reader the considerable trouble of scouring the four corners of Liebermann's monumental but unhandy glossary. Hence it should have an appeal to browsing lawyers of antiquarian tastes, and it is to be hoped that this belated notice will bring it to their attention, for the book was privately printed and not extensively advertised. Wider and more practical use of the book would be contingent upon the extension of the rule of *Ownby vs. Morgan,* 256 U. S. 94, and *Coler vs. Corn Exchange Bank,* 250 N. Y. 136, aff'd 280 U. S. 218, to hold these very old and sometimes barbarous rules to be part of "the common law" relevant on matters of procedural due process. Which is speculative, to say the least.

IRWIN L. LANGBEIN.

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Columbia University.

Aspects of Athenian Democracy: By Robert J. Bonner, 1933. Berkeley: University of California Press, Pp. 199.

This volume is handsomely printed on good paper, well bound and with impeccable proofreading. Its first statement awakens interest: it is boldly stated that "the Athenians of the fifth and fourth centuries B. C. achieved the most logical form of democracy of any people, ancient or modern—a democracy and government by discussion."

A graphic and accurate sketch is given of the constitutional evolution of Athens from the heroic age through that of Theseus (whom, it is to be feared, many regard as more than half mythical), who framed the popular assembly—of the aristocracy who usurped its powers—of Solon, who rehabilitated it, but organized the council as a counterweight—of Pisistratus who deluded and over-awed it—of Cleisthenes who elevated it, reorganizing the council and inventing "ostracism," which lasted until 418 B. C.—of Ephialtes who attacked it—the revolutions of 411 and 403 B. C.—the Thirty Tyrants who were expelled by it—the ultimate constitution of council, its committees, the prytanies, and the assembly, each with its own function; Aristotle tells of no less than eleven constitutional changes in its history.

In the chapter on the judiciary, it is said that always "the first concern of the Greeks was for Justice; they believe that the assurance of justice to its members was the first duty of the State." An account is given of the evolution of the system for recovering justice from the heroic age with no judiciary but only arbitrators—kings preferred—the litigants betting on the result. Voluntary arbitration gave way to compulsory arbitration and gradually to compulsory process of the law and regular courts. Athens was the first city of Greece to establish regular legal processes. Unwritten laws were codified, Draco's drastic code of 621 B. C. being an example; the dicasts or judges began to be paid, and pay to jurors, first suggested by Aristides, was established, "the last step in the democratization of the law courts." Athens had no public prosecutor, no crown attorney or district attorney, but anyone could prosecute, giving rise ultimately to the "sycophant," blackmailer. At all times, too, the magistrate was subject to recall.

The Greek from Homeric times was much given to words and much influenced by them. The politician was, *ex necessitate,* an orator, endeavoring to influence the assembly: freedom of speech was absolute, and before long the "demagogos," the "leader of the people," became the demagogue in our sense; but he was generally (differing from the sycophant) a man of substance and standing, and an unsuccessful orator was liable to be dragged off the platform and made an object of ridicule.

Citizenship—the loss of it—education—primary and secondary—music, poetry and gymnastics—military training, cavalry and foot—taxation and the so-called voluntary gift to the State—apprehension of criminals, their prosecution and punishment—public honors and rewards for public services—public games, sacrifices, plays, etc., are the subject of an illuminating chapter.

The literature, whether written by a Sophocles or an Aristophanes, unmistakably reflected as does no other literature the political, social and economic condition of the people, but oratory was essential. At first natural, it came to be formally taught with its concomitant phrase-making. Solon, Antiphon, Lysias, Gorgias, culminating in Demosthenes, had all their own methods. And always there was an Aristophanes on the watch, dealing with public men and public measures with "ridicule, satire and never-failing good humor"; he could make even reforms look ridiculous.

Religion is treated in a separate chapter, with some account of the Eleusinian mysteries and the oracles; Socrates' offering of a cock to Asclepius, and Ciron's activities in the realm of religion as well as the mysterious mutilation of the Hermae, of which Alcibiades was accused. And the final chapter deals with imperialism, always obnoxious except to the few.

The whole book is admirable in its learning, its candor and its careful weighing of all available sources of information.

* * *

London Prisons of Today and Yesterday. By Albert Crew. 1933. London: Ivor Nicholson and Watson, Limited, Pp. viii, 268.

This work is a treasury of fact for those who wish information on its subject, and is not without value for all who are interested in crime and its punishment. Differing however from most books of the kind, it is not written in a didactic, but in an easy, conversational style.

We are given a full and painstakingly accurate account of the existing prisons in London, characterized by thoughtful and sympathetic treatment of their aims, difficulties, successes, failures.

Some account, too, is given of the English prison historically, with its abuses and brutality. The constant presence of gaol-fever, our typhus, in the old prison is noted, and mention is made of the notable incident in 1740 of two judges, aldermen, officers and attendants to the number of some forty, dying infected with gaol-fever from the prisoners from Newgate. Some of us have seen the bouquet of flowers set before

the trial judge at the Old Bailey, originally intended to protect his lordship from infection from the prisoners to be tried. In Upper Canada, I may mention that some of those sentenced for treason in the war of 1812-1815 died in Kingston gaol of gaol-fever while waiting transportation.

The gaol in the olden time was mainly for detention before trial. Most offences were punishable with death, and execution, while originally immediate, as it long continued in some courts in Scotland, came to be inflicted on the next day but one after sentence; hence the custom to fix Friday as "sentence day," to give the unfortunates one day more of life, Sunday being accounted a *dies non.*

Compare with this the story of John Bernardi, who for political reasons was committed to Newgate in 1689 and lived there until his death in 1736, still untried,—but he had the consolation of marrying and having his wife give him ten children in the prison, where they all lived together.

Executions were in public in England until 1868. Everyone will remember the description in Oliver Twist. I myself in the sixth decade of the last century saw in Cobourg, Upper Canada, crowds of eager witnesses on the trees around the gaol-yard, when Dr. King was to be hanged, and some yeomen came over thirty miles to witness the spectacle.

Then the *peine forte et dure,* which, perverted from its original purpose, lasted in England until 1772; Massachusetts used it at Salem on Giles Corey. The stocks lasted in England until 1837; we saw them for the last time in Toronto in 1834, inflicted on a woman who gave "lip" to the mayor. The cat-o'-nine-tails is still occasionally heard of, from whose old form Titus Oates received 17,000 lashes (and deserved them all). The treadwheel, too, invented by a scientist "of gentle and pleasing deportment;" "Black Maria," which is said to have its name, known all over the English-speaking world, from the large and strong negress, Maria Lee, who kept a boarding house in Philadelphia, about a hundred years ago, a woman of such size and strength that the unruly stood in dread of her and when constables required help they sent for her and she soon collared the refractory and led them to the lock-up.

Humanity rebelling against the cruelty of old has brought it about that the best modern prisons are psychiatrical and moral hospitals, looking to the education, reformation, rehabilitation of the prisoner, not to make him unnecessarily suffer, *laus Deo.* Still, prison is always and must always be a punishment. Due credit is given to the reformers, Jeremy Bentham, John Howard, Elizabeth Fry and others.

This book, describing as it does the modern prison and comparing it with that of old, is worth while and should do much for prison reform.

WILLIAM RENWICK RIDDELL.
Osgoode Hall, Toronto.

Leading Articles in Current Legal Periodicals

Tulane Law Review, December (New Orleans, La.)—Responsibility of the State in Internal (Municipal) Law, by Ernst Freund; The Exception of No Cause of Action in Louisiana, by Henry George McMahon; Common Law Judicial Technique and the Law of Negotiable Instruments—Two Unfortunate Decisions, by Frederick K. Beutel; Real Defenses and the Negotiable Instruments Law, by Thomas F. Green, Jr.; Trends in Louisiana Law of the Family, by Harriet S. Dagget.

Virginia Law Review, November (University, Va.)—Problems under the Securities Exchange Act, by Eustace Seligman; The Federal Declaratory Judgments Act, by Edwin M. Borchard; The Use of the Federal Interstate Commerce Power to Regulate Matters within the States, by Theodore W. Cousens.

University of Pennsylvania Law Review, December (Philadelphia, Pa.)—Synthetic Courts; A Symposium on Extrajudicial Settlements: A General Introduction, by Philip G. Phillips; The Historical Background of Commercial Arbitration; by Earl S. Wolaver; Extrajudicial Settlement of Controversies—The Business Man's Opinion; Trial at Law v. Nonjudicial Settlement, by Carl F. Taeusch; Specific Enforcement of Arbitration Contracts, by Sidney P. Simpson; Contractual Control over Adjective Law: Recent Developments, by Nathan Isaacs; Sound Rules and Administration in Arbitration, by J. Noble Braden; The Arbitration of Labor Disputes, by E. L. Oliver; Procedural Aspects of Arbitration, by Osmond K. Fraenkel.

Boston University Law Review, November (Boston, Mass.)—Dean Roscoe Pound—His Significance in American Legal Thought, by George R. Farnum; The Automobile Guest, by Joseph B. Corish; The Supreme Court Makes the Constitution March, by Frederick M. Davenport.

Minnesota Law Review, December (Minneapolis, Minn.)—Agriculture and the Bankruptcy Act, by John Hanna; The Corporate Reorganization Act, by Stanley Law Sabel; The 1934 Edition of the Federal Revenue Act, by Charles L. B. Lowndes.

Tennessee Law Review, December (Knoxville, Tenn.)—Fundamental Law in the Society of Today, by Roscoe Pound; Sole and Unconditional Ownership, by Millsaps Fitzhugh; The Justice of the Peace System in Tennessee, by T. L. Howard.

Iowa Law Review, November (Iowa City, Ia.)—Equity and the Law of Property, by Percy Bordwell; Attacking a Defective Pleading, by Dwight G. McCarty; The Evolution of the Doctrine of Discovery and its Present Status in the State of Iowa, by Buell McCash; Equity Jurisdiction in the United States Courts with Reference to Consent Receiverships, by Stanley L. Sabel.

Yale Law Journal, November (New Haven, Conn.)—The Constitutionality of the Ship Mortgage Act of 1920, by Stanley Morrison; A Lawyer's Approach to Commercial Arbitration, by Philip G. Phillips; Comparative and International Aspects of American Gold Clause Abrogation, by Arthur Nussbaum.

Notre Dame Lawyer, November (South Bend, Ind.)—Law and Morals, by Charles C. Miltner; Conflict of Laws in Divorce Cases, by Walter B. Jones; The Legal Concept of General Welfare, by Vernon A. Vrooman.

Kentucky Law Journal, November (Lexington, Ky.)—Legal Liability of the Public Accountant, by Colvin P. Rouse; Ownbey v. Morgan—A Judicial Milepost on the Road to Absolutism, by Forrest Revere Black; Injuries to the Interests of Landowners, by Charles T. McCormick; Sunday Legislation, by Alvin W. Johnson.

Michigan Law Review, November (Ann Arbor, Mich.)—Federal Regulation of Motor Carriers, by Paul G. Kauper; Penalties as Affected by Good Faith Litigation, by Robert E. Hardwicke; Corporate Reorganization under Section 77B of the Bankruptcy Act, by Jacob J. Kaplan.

Canadian Bar Review, November (Ottawa, Ont.)—La Theorie de la Faute Commune Dans le Droit de la Province de Quebec, by R. A. Beullac; A Critique of Canadian Criminal Legislation, by George H. Crouse; The Last Vestige of Disallowance, by Thomas H. Le Duc.

A PROPOSAL FOR A LIMITED BAR

Considerations Which Indicate That Bar Would Be Improved by Limitation of Its Membership—A Method by Which the Problem Might Be Successfully Solved—Objections Which Will Be Urged Against Proposal—Historical Aspects of the Subject—Representation by Counsel and Practice of Law Are Both Privileges and not Rights—Recognition of Right to Restrict Number of Lawyers, etc.

By Sidney Teiser
Member of the Portland, Oregon, Bar

THE public, through the press, the rostrum, the radio and even the pulpit, has flung a challenge to the Bar to clean up, to rid itself of its cumbersome and costly impedimenta, to speed up its processes, and to free itself of its lethargy. It is a challenge to which it can, if it prefers, give only perfunctory attention. But such treatment of the challenge is perilous. The Bar must awaken and must act, and must act without its customary delay, or it will, beyond doubt, fail to regain its former prestige, and will, of a surety, lose whatever position of respect it still retains. That these general assertions are not mere sounding generalities made for the purpose of supplying a rounded introduction, one needs for confirmation, but to have heard the courageous and scholarly address of Robert H. Jackson, chairman of the Conference of Bar Association Delegates, made at a joint gathering of the Bar Association Delegates and of the American Judicature Society at Milwaukee last September, or to read a report thereof in the American Judicature Society's Journal for October, 1934. Other lawyers and some judges, though their number be small, have hearkened to the challenge sounded and are seeking co-operation from their fellows on Bench and at Bar in the giving of something more than a careless defiance to the attack.

There are many problems to be met. Dishonesty, Incompetency, Delays, High Cost of Litigation are but catch-word suggestions of a few of them. The angles from which these suggested problems and others may be approached and attacked are many.

However, let us revert to fundamentals before approaching even one single angle of attack.

Representation by Counsel a Privilege—Not a Right

We know that in ancient England, as in ancient Greece and Rome, litigants conducted their suits in person,[1] and that lawyers were unknown. As life became more complex litigation increased, and the questions presented for solution became more involved, and the rights and obligations of the parties became more difficult of ascertainment. Certain alert members of the community, though they were not the parties concerned, began to study these rights and obligations, and to offer suggestions and advice to the interested ones, and in time these alert ones were sought out for their opinions, their advice, and even their active help. And soon emerged a class of specialists, or advisers, or advocates —the Lawyer.[2] Through their knowledge and proficiency, and sometimes their profundity, and because of the rendition by them of a public service to society, they made for themselves a respected and dignified place in the State. But let it be remembered that while these advocates were permitted to appear for a litigant, it was a privilege accorded to them, and for that matter a privilege accorded to the litigant, for, as indicated, a litigant originally was required to appear in person, and in person to conduct his cause or defense. Attorneys were not permitted to make a charge for their services and therefore could not enforce a promise by the litigant to pay for the service. They could accept, and usually expected and did accept, an *honorarium*.[3] This situation, generally speaking, continued through modern times, and in fact exists in England today where a fee, if not voluntarily paid by the client, cannot be recovered by the attorney.[4] And while everywhere today lawyers' services are the subject of contract, still, contracts for legal services between lawyer and client are scrutinized closely by the courts, and if unfair, are subject to modification. Such a situation is not strictly true of other contracts.[5]

Practice of Law a Privilege—Not a Right

These observations have been made to develop logically the postulate that the right to practice law is not a natural or inherent right.[6] Women, at times, have thus been excluded from the practice of law.[7] The right to practice is not an inalienable right of an American citizen, as is the right to pursue an industrial occupation.[8] Nor is it either a privilege or immunity which may not be denied to him.[9] It is not a "property right,"[10] or a "contract"[11] within the meaning of the Constitution.

Thus, courts from the earliest of times have by authority of legislative act, or through their inherent power, exercised without successful constitutional challenge, the right to determine who should, and therefore, who should not, be permitted to practice the profession of law, and to that end has exercised the right to determine one's intellectual fitness, general and legal educational qualifications and moral character properly to perform that function.[12] The power was exercised through general formulated or unformulated rules, either directly by the courts, or by some board or commission appointed by the courts or designated by legis-

1. 3 Blackstone Commentaries 25.
2. 1 Pollock & Maitland History of English Law (2nd Ed.) 217.
3. 3 Blackstone Com. 28.
4. 1 Thornton on Attorneys at Law, Sec. 7, p. 9.
5. 1 Thornton on Attorneys at Law, Sec. 152.
6. State v. Rossman (Wash.), 101 Pac. 357; 21 L. R. A. (N. S.) 821, 822. Kings Benchers of Lincoln's Inn, 4 Barn & Co. 855. Re Maddox, 93 Md. 28, 50 Atl. 487, 55 L. R. A. 908.
7. Re Maddox, 93 Md. 28, 50 Atl. 487, 55 L. R. A. 908.
8. In Re O'Brien, 79 Conn. 46, 63 Atl. 777.
9. Bradwell v. Illinois, 16 Wall 130, 21 L. Ed. 442, 445.
10. Bosque v. U. S., 209 U. S. 91, 28 Supt. Ct. Rep. 501, 52 L. Ed. 698.
11. Cohen v. Wright, 22 Cal. 307.
12. Blackstone's Com., Vol. 3, 26. Re Day 181 Ill. 73, 50 L. R. A. 519, 523-4.

lative authority. But the right so to determine has been universally recognized.

Recognition of Right to Restrict Number of Lawyers

Moreover, the right to restrict the *number* of attorneys permitted to practice is recognized in England, and for a long period of years the right was exercised.

In the reign of Edward I., the year 1275, King Edward directed his justices "to provide for every county a sufficient number of attorneys and apprentices from among the best, the most lawful, and the most teachable, so that the king and the people might be well served." The suggestion was made that a hundred and forty of such men would be enough, but that the justices might, if they pleased, appoint a larger number.[13]

During the reign of Henry IV (1399-1413), it was enacted that attorneys should be examined by the justices and in their discretion their names put on the rolls, "and that if one of said attorneys do die, or do cease, the justices shall make another in his place, which is a virtuous man and learned."[14]

In the year 1455, Parliament, after reciting the great increase of attorneys in Norfolk and Suffolk, enacted that there should be but six attorneys in Norfolk, six in Suffolk and two in Norwich, to be admitted by the two chief justices.[15] Thereafter several Parliaments passed statutes decreasing the number of attorneys.[16]

Between the years 1457 and 1705 various rules were promulgated in the courts of King's Bench and of Common Pleas regulating the number of attorneys allowed to practice.[17] And Coke in his Institutes lamented the increase of attorneys beyond the number allowed by law.[18]

Prior to the reign of Victoria, only serjeants were allowed to practice in the Courts of Common Pleas, "the grand tribunal for the dispute of property," and their number was limited to fifteen.[19]

Not until the reign of Victoria had begun was this tribunal opened to barristers generally.[20]

It will be seen therefore that the right exists not only to limit the privilege of practicing law by prescribing education and character qualifications, but, at least in England, the right also exists to limit the number who might be permitted to practice.

From this short historical sketch it is believed that it will be apparent that our courts have the latent power to restrict the number of attorneys to be admitted to practice, and need but legislative enactment or promulgation of court rule to bring the power into exercise. Certainly there seems to be no constitutional limitation against the exercise thereof.

Preliminary Observations

Now let us inquire whether or not the "people might be well served" as stated in the language of the Edwardian Statute referred to, if the number of attorneys admitted to practice be restricted. Would such a restriction elevate the mental and moral character of the Bar for the public good and thus help to meet the challenge of the Public to the Bar spoken of in the introduction to this article?

In order to address ourselves to this inquiry there are three preliminary questions which must first be determined:

1. Is the Bar now overcrowded?
2. Would a lessening of the number of those at the Bar tend to elevate the Bar in both character and ability?
3. Would such a lessening be in the public interest and for its benefit?

Unless this last question be answered in the affirmative, further inquiry is useless, for it cannot be repeated too often or be kept in mind too long that the public good is the one ultimate object for which we must strive. Other advantages and benefits must be incidental only, but the benefit and advantage of the public is the design, the motive, the purpose and the end to be attained. If the plan to be proposed promotes the interest of the Bar well and good. Such promotion, however, can and should be merely accidental. The design must always be service to the public.

Is the Bar Overcrowded?

Alexander B. Andrews, ex-president of the North Carolina Bar Association and Chairman of the Special Committee on Judicial Salaries of the American Bar Association, has made an extensive research into the number of lawyers admitted to the Bar in various countries. In an address to the North Carolina Bar Association in 1929 he demonstrated the comparative overcrowding of the Bar in this country as contrasted with that of other countries.

For example, in England and Wales (using approximate figures) there is one lawyer for each 2100 of population, or about 47 lawyers for each 100,000 of population.

In Canada and in Greece there is one lawyer for each 1250 of population, or about 80 lawyers for each 100,000 persons.

In Hungary and in Norway there is one lawyer for each 1600 persons, or about 63 lawyers per 100,000.

In Italy, in Belgium, and in Denmark there is one lawyer for each 2500 persons, or about 40 lawyers for 100,000 persons.

In France, in Hungary, in Germany and in the Netherlands there is one lawyer for every 4500 persons, or about 22 lawyers for each 100,000 population.

In the United States, for the similar period, there was one lawyer for each 862 persons, or 115 for each 100,000 of population. After the last census, 1930, there was one lawyer for each 761 persons and 131 lawyers per 100,000 of population.

While it is fully realized that conditions in the foreign countries mentioned might very well be, and probably are, far different from those in the United States, so that the demand for the quantity of legal services in such countries is less than in the United States, yet in no foreign country is the population per lawyer nearly so small as in the United States, nor, therefore, are there nearly so many lawyers for each 100,000 of population as in this country. England and Wales, for example, with one-third of the population of the United States had one-seventh as many lawyers in 1920 and apparently have a less proportionate number in 1930, while France, with one-third of the population of this country, has one-eighteenth the number of lawyers.

So far as the United States is concerned, the National Conference of Bar Examiners in its monthly

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13. Rolls of Parliament, i. 84; Pollock & Maitland, History of English Law, Vol. 1 (2nd Ed.) 216.
14. 4 Henry IV, 18. Reeves History of English Law, Chap 18. Weeks on Attorneys at Law (2nd Ed.) 92.
15. 33 Henry IV, 7; Weeks on Attys. at Law (2nd Ed.) 93; Re Day, 181 Ill. 78, 50 L. R. A. 619, 624.
16. See 2 Coke Inst. 250.
17. Weeks on Attorneys at Law (2nd Ed.) 93.
18. 4 Coke Inst. 76.
19. 3 Blackstone Comm. 27. Weeks on Attorneys at Law (2nd Ed.) 52.
20. 9 & 10 Vict. c. 54. Sharswood's Note to 3 Blackstone Com. 279.

publication, the Bar Examiner for July, 1932, publishes the number of lawyers in each state for the year 1930 and sets forth a comparative table similar to that set forth by Mr. Andrews. That is to say, it determines the number of lawyers per 100,000 of population, and the population per lawyer; and this table is in accord with that of Mr. Andrews so far as the United States is concerned. No tables are given as to foreign countries.

The District of Columbia ranks first in the number of lawyers for 100,000 of population, which, of course, is not unnatural in view of the fact that so many governmental interests are centered in the District of Columbia. There, in 1930 the ratio was 714 lawyers per 100,000 of population, or one lawyer for each 140 persons. Nevada is next in line as to the number of lawyers having 254 lawyers for each 100,000 of population, or one lawyer for each 394. (Perhaps salesmanship, concerning ease of divorce, caused the supply of lawyers to overflow somewhat in this locality.) New York is next with 219 lawyers for each 100,000, or one lawyer for each 456 persons, and California, Florida, Maryland and Oregon follow, Oregon having 167 for each 100,000, or one lawyer for each 598 persons. Alabama has the least number of lawyers for 100,000 of population, namely, 60, with Mississippi, South Carolina, North Carolina, New Hampshire, Louisiana, Arkansas, New Mexico, Pennsylvania and Delaware following, Delaware having 87 lawyers per each 100,000 of population, or one lawyer for each 1150 persons.

It is well understood why the southern states should have fewer lawyers per 100,000 persons when it is realized that so many of its population are negroes, whose business interests are very limited and who have little to litigate about, at least so far as property is concerned.

To repeat, in 1930, the United States had some 160,000 lawyers—131 lawyers for each 100,000 of population, or one lawyer for each 746 persons. In a recent article, Mr. Will Shafroth, Assistant to the President of the American Bar Association and Advisor to the Council on Legal Education and Admission to the Bar of that Association, states:

> "The Bar is decidedly overcrowded. In 1930 we had 160,000 lawyers and now we have 175,000. Law school enrollment which dropped steadily for five years this year shows an increase."[21]

The number seems appalling when it is considered that each 100,000 of population in the United States consists of less than 25,000 family units, according to the 1930 census, for under the United States census a person, man or woman, living alone, as well as a group living together and dependent upon a head, is deemed to be a family unit. Without question, therefore, compared to foreign countries, the Bar in this country is overcrowded, and it is believed that it can well be asserted to be overcrowded irrespective of any comparison with foreign countries when it is recalled that on the 1930 basis there was one lawyer for each 764 persons, or one lawyer for each 140 family units. The personal experience of practically every member of the Bar will likewise bring home this conclusion.

In a very recent canvas of the legal profession in Missouri the State Bar Association discovered that in the opinion of those answering questionnaires the bar in that State was overcrowded to an appreciably large extent and that about 55% of the lawyers practicing could attend to all available legal business."[22]

21 Tennessee Law Review, Apr. 1934.
22. See American Bar Association Journal, Dec. 1934, pp. 768 and 801.

Bar Would Be Improved by Limitation of Its Membership

Let us now determine whether or not a lessening of the number of those at the Bar will tend to elevate the Bar in both character and ability. Of course, an indiscriminate lessening would not in all likelihood do so. In order to improve the character, both mentally and morally, of the Bar by lessening its number, there must be an intelligent weeding out. Naturally, such weeding out cannot practically be accomplished by pointing the finger to this one or that who might be less competent or less scrupulous, and plucking such ones from the mass. It is believed, however, that a method is available whereby the integrity and the ability of the Bar may be enhanced by a restriction upon the numbers who may be called thereto. Certainly, there is no question but that its whole fabric would be greatly bettered by having at the Bar only men of ability and integrity. We will reserve for later discussion a method whereby it is believed the accomplishment of this desired end could at least be approached.

Limitation Would Be Beneficial to Public

If such a situation can be accomplished, would the accomplishment thereof be in the interest of and for the benefit of the public? If it would not be for the public good, the attempt to remedy the condition of the Bar by this method should be promptly dropped, for the public welfare is the sole determining factor.

Certainly it would appear that if a sufficient number of attorneys were available for employment by the public, consisting of men chosen at the time of their admission for their ability, high educational attainment and good moral character, the public would better be served than if there were a group of men at the Bar, larger than the public required, but some of whom were, at the time of their admission, of a high type mentally and morally and many of whom, while of good character at the time of their admission, yet were of inferior ability.

We know as a problem in psychology and of human behavior that under stress of want, however able and well intentioned one may be, one frequently yields to pressure and often undertakes the accomplishment of things not entirely scrupulous. Once undertaken, the second yielding is not so hesitant and in time, as indicated in the couplet of Pope, the opportunity is embraced and there is no longer any yielding. In other words, it should be quite obvious that where a large group of individuals are not remuneratively employed and an opportunity for immediate profits presents itself in return for an unscrupulous act, the likelihood of such unscrupulous act being performed is great, at least far greater than should such problem be presented to an educated group inherently honest and all of whom are remuneratively employed. We know that at the present time there are many lawyers at the Bar who are not scrupulous. There are many lawyers at the Bar who are not highly competent and the public has no way of knowing who are the honest and able members of the Bar and who are the unscrupulous though able, members, or who are the scrupulous though incompetent ones. When the Bar is overcrowded to such an extent that it is not profitably employed, while its ability may be maintained (although that is doubtful), it is difficult if not impossible to maintain its integrity and scrupulousness. If, therefore, the Bar be thus overcrowded and this overcrowding can be curtailed, unquestionably

it would be to the interest of the public to do so, irrespective of any betterment which might come to the Bar in the doing.

Method of Meeting the Problem

There remains, then, to be determined how this overcrowding of the Bar may be remedied and a proper relationship between the population and the number of lawyers may be maintained, without working undue hardship upon anyone.

Let us assume, for the purpose of reaching a definite basis, that the Bar is 33⅓ per cent overcrowded, so that notwithstanding 33⅓ per cent thereof in number be eliminated, there would still be sufficient attorneys left to take care of all possible business and litigation that would arise. Hence, in the state of New York, for example, where there are now 219 lawyers for every 100,000 of population there should be on such basis but 146 lawyers per 100,000 of population, a reduction of 73 lawyers for each 100,000 unit. And so in Oregon, where there are 167 lawyers for each 100,000 persons, the number should likewise be reduced to 111 for every 100,000 of population.

This ratio could not be applied with a yardstick in every state for there may be in some of the states a proper balance, or even a scarcity of lawyers, although it is quite doubtful whether such scarcity would exist anywhere in this country.

However, upon the assumption that such a ratio of reduction is desirable, and certainly it would seem that some ratio of reduction is desirable whatever it be, whether 33⅓ per cent or 40 per cent or 20 per cent, would it not be the part of wisdom for each state frankly to plan such reduction by denying admission to the Bar to all applicants until there is a recession to the ratio of reduction determined upon, but nevertheless allowing, by all means, a period of time to elapse before putting into effect the proposal to entertain no further applications for admission? By postponing the taking effect of such enactment, those who are now seeking at the colleges and law schools of the country a legal education with a view to practicing law, would be fairly dealt with, since by the time they will have in the ordinary course completed their studies, they will still have the opportunity to present themselves for examination under the system now in effect.

It is therefore suggested that the legislature of the State of Oregon, for example, enact that after, say, the year 1939 no one should be admitted to practice law in that state unless and until there be less than 111 lawyers practicing at the Bar for each 100,000 of population in Oregon. In 1930 Oregon had 1595 lawyers and a population of 953,786. Assuming that the population of Oregon in 1939 increased to but 1,000,000 persons, Oregon under such proposed enactment would then be entitled to 1110 lawyers. If there were more lawyers at that time practicing at the Bar, then no further lawyers would be admitted until the number was decreased by death or resignations or disbarments to a figure below 111 times each 100,000 of population. In the meantime, those who are now attending law schools or contemplate doing so during the coming year would have an opportunity to stand the Bar examinations under the existing requirements, and if receiving a passing grade as now provided, they will be admitted to practice. All who contemplate studying law in the future would be forewarned that beginning with the year 1939 no further lawyers would be admitted to the Bar in Oregon until the number of lawyers practicing at that Bar were less than 1110.

Let us say that the number would recede in the year 1944 to 20 below that figure. Then it would be announced that 20 attorneys were eligible to be admitted to practice law in the State of Oregon, and the Bar examiners would be required to admit 20 attorneys during that year, and no more, from those presenting themselves for examination. The 20 who showed themselves the most able and most intelligent by their examinations, after first having passed a strict moral character test, would be the ones admitted.

Under such a plan there need be no more requirements concerning how many years of pre-legal training one must have before being permitted to stand an examination. No more consideration need be given as to how many years of attendance one must have had at a law school, or how long one must study law in a law office. The Bar and the Public may well feel assured that if only those who pass at the top of the list of applicants will be admitted, those who stand topmost will be well and suitably qualified.

This method would bring to the Bar a character and intelligence far superior to that which now comes to the Bar, and the method would be fair to all seeking admission, and certainly would give to the public, whose interest should be uppermost in mind always, a better, more efficient and more honorable group from which to choose an attorney than exists at the present time.

Objections Which Might Be Urged to the Plan

It may be objected that even though the method be a good one, it is not practical: first, because the legislatures will not enact it; second, because it would be harmful to the law schools; and third, because it might be unfair to the coming generation in not permitting them the opportunity of practicing law if they fit themselves for such practice.

Let us discuss the objections suggested.

Plan Should Gain Legislative Approval

It is admitted that there is considerable question as to just what attitude a legislature might take concerning the proposal to limit the number of lawyers admitted to practice in the State. It may well be that such a plan might be subjected to much opposition on the ground that it tends to give a monopoly to a certain favored group. On the other hand, the argument is always available that such regulation is in the public interest. An additional argument, much in vogue at the present time, might also be properly advanced, namely: That it would tend to give a more stable and fixed return to a certain group and eliminate the variable and uncertain position prevalent in such group today—the argument of the New-Dealers. But here an advantage would be had over the advocates of the "New Deal," since such a proposal would not encroach upon the boundary lines of constitutional rights. However, should the attitude of the legislature be unfavorable, enlightened and persuasive arguments properly and steadily invoked would in time be likely to prove successful in changing such attitude. Moreover, it must be remembered, sad as it is to recall, that the suggestion of curtailing the number of lawyers may be met with favor, since many now look upon the lawyers as a necessary evil at the best, and any measure tending to lessen their number might be embraced with fervor.

Law Schools Should Favor Plan

What effect would such a measure have upon the law schools? While the better law schools might, at first blush, resent the idea of having withdrawn from their compass a field of prospective students, yet, upon

more mature consideration, it is thought that these institutions will realize that a sufficient number of students of improved proficiency who desire to become a part of an honored and protected profession will still be available. Those students who desire to learn the law and practice it will perforce seek out the best of the law colleges since the higher standard which the student will be forced to acquire in order to be admitted to the Bar will preclude them from a choice of any college but those of the highest rank. True, the number of those who will study law will be materially reduced, but those who will perfect themselves for the study, while fewer, will have better preliminary preparation and greater earnestness of purpose, and certainly colleges of high standing can the better compete for such students than those, for example, who have not received the approval of the Council of Legal Education and Admission to the Bar of the American Bar Association. While, as indicated, the better law schools of the country may not at first welcome such suggested change, yet a thorough consideration of its merits and its effect upon the profession and of the benefits thereof to the public will induce, it is believed, a favorable reception by them of the idea.

Plan Is to Ultimate Advantage of Prospective Lawyers

Now what of the embryonic lawyers? What of those who now have the desire to study the law and to qualify themselves for the practice of the profession? Would it be fair to such a prospective group? Certainly, even waiving the good of the public, which of course must never be waived, greater good must come to this embryonic mass from the proposal to limit the number at the Bar to the requirements of the public. For a few years, perhaps, due to oversaturation, there may be some hardships experienced, but in the end, and soon, there will of a certainty be a sufficient demand for men and women of ability and integrity at the Bar to make the profession highly attractive again and to offer sufficiently numerous places to be filled. The urge to become one of the profession would then not be discouraged or dampened and the acquisition of an honored place at the Bar would not be denied to one who was able and honest, and who had the requisite energy to qualify himself so as to compel admission.

The Federal Requirement of Superfluous Oaths—A Chance for "New Deal Reform"

BY FRANK W. GRINNELL
Member of the Massachusetts Bar

HOW many million oaths to how many million documents are required every year by the various states and by the national government, I have no idea, but I do not believe that any of these perfunctory oaths adds a particle of reliability to the documents thus sworn to. In spite of the current comments throughout the country as to the prevalence of perjury, I still believe that the administration of an oath to a witness in court is of some practical value in the administration of justice. But, outside of a court room, I think it is the common belief that an oath required for the verification of all kinds of documents is an absurd, inconvenient and useless formality which, as stated by the Massachusetts Judicature Commission in its second report in 1920, "instead of adding any special sanction to the document thus sworn to, rather tends to bring the sanction of an oath into contempt."

Mr. William D. Parkinson, of Fitchburg, Massachusetts, wrote a letter to the press in 1924, which was reprinted in the *Massachusetts Law Quarterly* for August of that year. In that letter, he said:

". . . To carry oath-making to the extreme that makes a joke of the process of administering the oath defeats its purpose. So many oaths are required of every man of affairs that every private business office must have a magistrate in attendance, some subordinate usually being designated to operate the swearing mill just as one would be designated to wind the office clock or to lock the safe. Jurats are filled out in advance of some signatures; oaths are taken over the telephone (the right hand held up before it); men swear to the best of their knowledge and belief about matters that they cannot possibly be familiar with; errand boys are sent to them to obtain their oaths off-hand to matters of belief so vague that no court would permit them to testify about them, or to pages of figures prepared by days and weeks of labor in which they had no share and for the accuracy of which they can vouch only because of their confidence in the persons who did prepare them. In these latter cases a voucher may be a proper assumption of responsibility, but the oath adds nothing to the voucher. . . .

"If 90 per cent of the oaths required . . . were to be remitted . . . it would not only save a vast volume of useless expenditure and useless labor (which is worse), but would raise the value of the other 10 per cent, and would eliminate a deal of genuine profanity now current both in the use of God's name in vain in the making of these useless oaths and in the more artistic and lurid types of irreverent expletives employed to express the contempt of the swearer for the process of swearing."

Almost every new form of government activity involves not only more money, but more perfunctory oaths. I suggest that the federal government might include in the "New Deal" some relief from all this ridiculous swearing. Massachusetts took a pioneer step in this direction in 1926 when the legislature passed Chap. 187 of the acts of that year (now G. L. Ter. Ed. C. 268 §1A) which provides as follows:

"Except in a judicial proceeding or in a proceeding in a court of justice, no written statement required by law shall be required to be verified by oath or affirmation before a magistrate if it contains or is verified by a written declaration that it is made under the penalties of perjury. Whoever signs and issues such a written statement, containing or verified by such a written declaration shall be guilty of perjury and subject to the penalties thereof if such statement is wilfully false in a material matter."

If I remember correctly, Congressman Luce has vigorously urged similar action upon Congress.

I suggest that bar association committees and members of bar associations support the movement for such action and call it to the attention of the administration and congressmen. I also commend the Massachusetts statute to other states. Perhaps the Commissioners on Uniform State Laws might help the movement.

IS SECTION 77B A PROPER PART OF A BANKRUPTCY ACT?

By Jacob J. Kaplan
Member of the Boston Bar

PROFESSOR RADIN'S article in the December number of the American Bar Association Journal, "What is a Bankruptcy Act?" presents a pertinent inquiry in view of the recent extension of the Bankruptcy Act into the field of corporate reorganization. His brief analysis of the question points out a number of the important issues to be determined in answering the question, and particularly as applied to section 77B.

The authority of Congress to legislate on the subject of bankruptcy is contained in section 8 of Article I of the constitution, which provides that the Congress shall have power to "establish . . . uniform laws on the subject of bankruptcies throughout the United States." At the time of the adoption of this language by the Constitutional Convention in 1787 and the subsequent ratification of the constitution by the Thirteen Colonies (1787-1790) the "subject of bankruptcies" must have had a fairly definite meaning; and it is in the light of that meaning, as so understood by the drafters and ratifiers, that Professor Radin's question must be answered and the constitutionality of the recent enactment tested.

Professor Radin refers in his article to two of the early English Bankruptcy Acts which antedated the adoption of the constitution. The subject of "bankruptcy" had, however, engaged the attention of European legislators for several centuries before the adoption of our constitution, and the English Parliament since 1542 (Act of 34 and 34 Henry VIII Ch. 4), although it was not until 1705 that the discharge of the bankrupt was first provided for (4th Anne Ch. 17). Although the first English Act extended to debtors generally, the jurisdiction was soon confined to "traders" and stood thus in 1789.

The state of the law regulating bankruptcy and insolvency in the colonies at the time of the adoption of the constitution is summarily reviewed in the argument of counsel before the Supreme Court of the United States in *Sturges v. Crowinshield*, 4 Wheat 122 (1819), Dagget, counsel for the plaintiff, at page 127; Hunter, for the defendant, at 143.

Looking somewhat more specifically at the laws of the various colonies, we find that, at the time of the adoption of the constitution, only one colony, Pennsylvania, had a statute expressly designated as a statute of "bankruptcy" and using the term, St. of 1785, Ch. CCXXX of Laws of Pa., 1781-1790. Massachusetts had had two "bankruptcy" Acts—Chapter 14 of the Province Laws of 1713-14 and Ch. 12 of the Province Laws of 1757-1768. The first expired by its own limitation in 1717. The second was disapproved by the Privy Council in 1759 (See Ch. 16 of 1760 Province Laws Mass. 1757-1768). No further effort was made by the Provincial Legislature of Massachusetts to legislate in the field except to provide for the confusion resulting. In nearly every one of the other colonies however there were in force statutory provisions for the relief of debtors who were willing to give up their property to their creditors by what was equivalent to a *cessio bonorum*.[1]

The English laws of bankruptcy, of course, were familiar to the colonial law makers and undoubtedly had a profound influence upon them. They undoubterly read of these laws in Blackstone. The first edition of the Commentaries (1766) contains the following:

> Vol. II. (page 471) "1. . . A bankrupt was before defined to be 'a trader, who secretes himself, or does certain other acts, tending to defraud his creditors.' He was formerly considered merely in the light of a criminal or offender; and in this spirit we are told by Sir Edward Coke, that we have fetched as well the name, as the wickedness, of bankrupts from foreign nations.
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> (Note: The word itself is derived from the word *bancus* or *banque*, which signifies the table or counter of a tradesman (Dufresne I. 969.) and *ruptus*, broken; denoting thereby one whose shop or place of trade is broken and gone; though others rather choose to adopt the word *route* which in French signifies a trace or track, and tell us that a bankrupt is one who hath removed his banque, leaving but a trace behind. (4 Inst. 277.) And it is observable that the title of the first English statute concerning this offence, 34 Hen. VIII. c. 4 "against such persons as do make bankrupt," is a literal translation of the French idiom, *qui font banque route*.)
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> "But at present the laws of bankruptcy are considered as laws calculated for the benefit of trade, and founded on the principles of humanity as well as justice; and to that end they confer some privileges, not only on the creditors, but also on the bankrupt or debtor himself. On the creditors; by compelling the bankrupt to give up all his effects to their use, without any fraudulent concealment: on the debtor; by exempting him from the rigor of the general law, whereby his person might be confined at the discretion of his creditor, though in reality he has nothing to satisfy the debt; whereas the law of bankrupts, taking into consideration the sudden and unavoidable accidents to which men in trade are liable, has given them the liberty of their persons, and some pecuniary emoluments, upon condition they surrender up their whole estate to be divided among their creditors."

An examination of the preambles to the English statutes, as well as to some of the colonial statutes, also throws some light upon the meaning of a "bankruptcy" act as then understood and leads to the conclusion that when the words of the constitution were chosen, the "subject of bankruptcies" was understood to mean no particular statutory method of dealing with insolvents but to cover the whole field of dealing by force of law with those persons who might find themselves unable to meet their debts, providing for a method of distributing their property among their creditors under

1. Delaware 1769, 13 Geo. II. Vol. I. Laws; 1797, p. 196. (Discharged the debtor's person but not his after acquired property).
Georgia—Act, March 6, 1776, Colonial Records (Candler) 1754-1805 Vol. XVIII p. 786; Marbury & Crawford, Digest (1802) p. 182. Like the Delaware statute for poor debtors.
Maryland—Act 1774, Ch. XXVIII. Like the Delaware Act.
New Jersey—1771 Acts of Province of New Jersey, 1702-1776, Collection published 1776, p. 256, c. DXLVII, extended 1786 (p. 331 Acts of Gen. Ass. N. J. 1783-1789). Provides for general discharge.
New York—Act. 1786, Vol. 2. Laws of N. Y. 1785-1786, ch. 84, p. 342 Like the New Jersey statute.
Act 1788, Vol. 2. Laws N. Y. 1785-1786, ch. 99, p. 823. Permits involuntary proceedings by creditor against imprisoned trader. A typical bankruptcy act and so designated in Ogden v. Saunders, 12 Wheat 213, 293.
North Carolina—Act 1773 (Iredell Laws of No. Car. 1389, c. 4, p. 262) several times repealed and revived between 1773 and 1790. Like the New Jersey law.
Pennsylvania—Laws of Penn. 1781-1790; Act of Sept. 16, 1785.
Rhode Island—Act 1798—Reenactment of Act. 1756, 1771. Public Laws of R. I. (1810) p. 132. Like the Delaware Act.
So. Car. Public Laws, Apr. 7, 1759. Like the New Jersey Law.
Virginia—Public Acts; Collection of 1783, Chapter III passed 1769. Limited discharge—otherwise like Delaware.

judicial supervision, avoiding frauds in connection therewith, and granting them a complete or limited discharge from their debts. Persons became "bankrupt" without adjudication because being traders they had lost the fundamental credit basis which entitled them to membership in the trading community.

Thus 34-35 Hen. VIII c. 4. (1542-3):

"An Act Against Such Persons as Do Make Bankrupts."

"Where (as) divers and sundry persons craftily obtaining into their hands great substance of other men's goods, do suddenly flee to parts unknown, or keep their houses, not minding to pay or restore to any (of) their creditors, their debts, but at their own wills and pleasures consume the substance obtained, by credit, of other men, for their own pleasure and delicate living, against all reason, equity and good conscience;"

Mass. Province Laws (1713-14) ch. 14:

"An Act Concerning Bankrupts, and for Relief of the Creditors Against Such Persons as Shall Become Bankrupt."

"Whereas merchants, shopkeepers, traders and others, that deal on credit, or live by buying and selling, within this province, oftentimes have, and may, either through adversity and losses, or through fraud and deceit, become bankrupt, and not able to pay their just debts, to the great hurt or damage of trade and commerce in general, and more especially to the loss of the creditors of such bankrupt or failing persons, occasioned also, very frequently, by one or more of the creditors of such bankrupt securing the whole or the greatest part of their debt(s), to the great injury and damage of the rest of the creditors;"

Mass. Province Laws (1757-1768.) ch. 12:

"An Act Providing Remedy for Bankrupts and Their Creditors."

"Whereas many people in this province, having of late become insolvent, have secreted themselves and their estates, to the great hurt of themselves, their families and creditors, for remedy whereof and to prevent many inconveniences that happen to creditors and debtors in cases of insolvency, . . ."

Laws of Penn. 1781-1790 ch. CCXXX, p. 368 (passed 1785):

"Whereas it is necessary and proper as well as conformable to commercial usage that persons using merchandise who by reason of misfortune or otherwise are unable to pay their debts should be compelled speedily and without delay to surrender up their effects and credits for the use of their creditors and be prevented from using or wasting the same and also that such honest debtors as in the course of trade and dealing have without any fault or crime become bankrupt should upon such surrender be liberated from the future demands of such creditors and enabled by their future diligence to support themselves and their families."

We find even in these early bankruptcy acts, colored as they were by a punitive element, evidence of a purpose not to strip the bankrupts penniless, but on the contrary, to leave them with some capital with which to reengage in commercial life. The English Act in force at the time of the adoption of the constitution, the Pennsylvania statute, the Massachusetts Acts and the New York statute each contained provisions awarding to the well behaving bankrupt a percentage of the "neat produce" of his estate, at the conclusion of the proceedings. A similar provision was included in the first Federal Bankruptcy Act passed by the Congress in 1800.

The standard by which a statute is to be measured and its constitutionality as a bankruptcy act determined was most happily stated in *Hanover National Bank* v. *Moyses*, 186 U. S. 181, when the Act of 1898 first came before the Supreme Court for consideration. Chief Justice Fuller, in delivering the opinion of the Court, said:

"By the fourth clause of section eight of article I of the Constitution the power is vested in Congress 'to establish . . . uniform laws on the subject of bankruptcies throughout the United States.' This power was first exercised in 1800. 2 Stat. 19, c. 19. In 1803 that law was repealed. 2 Stat. 248, c. 6. In 1841 it was again exercised by an act which was repealed in 1843. 5 Stat. 440, c. 9; 5 Stat. 614, c. 842. It was again exercised in 1867 by an act which, after being several times amended, was finally repealed in 1878. 14 Stat. 517, c. 176; 20 Stat. 99, c. 160. And on July 1, 1898, the present act was approved.

"The act of 1800 applied to 'any merchant, or other person, residing within the United States, actually using the trade of merchandise, by buying or selling in gross, or by retail, or dealing in exchange, or as a banker, broker, factor, underwriter, or marine insurer,' and to involuntary bankruptcy.

"In *Adams v. Storey*, 1 Paine, 79, Mr. Justice Livingston said on circuit: 'So exclusively have bankrupt laws operated on traders, that it may well be doubted, whether an act of Congress subjecting to such a law every description of persons within the United States, would comport with the spirit of the powers vested in them in relation to this subject.' But this doubt was resolved otherwise, and the acts of 1841 and 1867 extended to persons other than merchants or traders, and provided for voluntary proceedings on the part of the debtor, as does the act of 1898.

"It is true that from the first bankrupt act passed in England, 34 & 35 Hen. VIII, c. 4, to the days of Queen Victoria, the English bankrupt acts applied only to traders, but, as Mr. Justice Story, in his Commentaries on the Constitution, pointed out, 'this is a mere matter of policy, and by no means enters into the nature of such laws. There is nothing in the nature or reason of such laws to prevent their being applied to any other class of unfortunate and meritorious debtors.' §1113.

"The whole subject is reviewed by that learned commentator in chapter XVI, §§1102 to 1115 of his works, and he says (§1111) in respect of 'what laws are to be deemed bankrupt laws within the meaning of the Constitution:' 'Attempts have been made to distinguish between bankrupt laws and insolvent laws. For example, it has been said, that laws, which merely liberate the person of the debtor, are insolvent laws, and, those, which discharge the contract, are bankrupt laws. But it would be very difficult to sustain this distinction by any uniformity of laws at home or abroad. . . Again, it has been said, that insolvent laws act on imprisoned debtors only at their own instance; and bankrupt laws only at the instance of creditors. But, however true this may have been in past times, as the actual course of English legislation, it is not true, and never was true, as a distinction in colonial legislation. In England it was an accident in the system, and not a material ground to discriminate, who were to be deemed in a legal sense insolvents, or bankrupts. And if an act of Congress should be passed, which should authorize a commission of bankruptcy to issue at the instance of the debtor, no court would on this account be warranted in saying that the act was unconstitutional, and the commission a nullity. It is believed, that no laws ever were passed in America by the colonies or States, which had the technical denomination of "bankrupt laws." But insolvent laws, quite coextensive with the English bankrupt system in their operations and objects, have not been unfrequent in colonial and state legislation. No distinction was ever practically, or even theoretically, attempted to be made between bankruptcies and insolvencies. And a historical review of the colonial and state legislation will abundantly show, that a bankrupt law may contain those regulations, which are generally found in insolvent laws; and that an insolvent law may contain those, which are common to bankrupt laws.'

"*Sturges v. Crowninshield*, 4 Wheat. 122, 195, was cited, where Chief Justice Marshall said: 'The bankrupt law is said to grow out of the exigencies of commerce, and to be applicable solely to traders; but it is not easy to say who must be excluded from, or may be included within, this description. It is, like every other part of the subject, one on which the legislature may exercise an extensive discretion. This difficulty of discriminating with any accuracy between insolvent and bankrupt laws, would lead to the opinion, that a bankrupt law may contain those regulations which are generally found in insolvent laws; and that an insolvent law may contain those which are common to a bankrupt law.'

"In the case, *In re Klein*, decided in the Circuit Court for the District of Missouri, and reported in a note to *Nelson v. Carland*, 1 How. 265, 277, Mr. Justice Catron held the bankrupt act of 1841 to be constitutional, although it was not restricted to traders, and allowed the debtor to avail himself of the act on his own petition, differing in these particulars from the English acts. He said among other things: 'In considering the question before me, I have not pretended to give a definition; but purposely avoided any attempt to define the mere word "bankruptcy." It is employed in the Constitution in the plural, and as part of an expression; "the subject of bankruptcies." The ideas attached to the word in this connection, are numer-

ous and complicated; they form a subject of extensive and complicated legislation; of this subject, Congress has general jurisdiction; and the true inquiry is—to what limits is that jurisdiction restricted? I hold, it extends to all cases where the law causes to be distributed, the property of the debtor among his creditors; this is its least limit. Its greatest, is the discharge of a debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject—distribution and discharge—are in the competency and discretion of Congress. With the policy of a law, letting in all classes,—others as well as traders; and permitting the bankrupt to come in voluntarily, and be discharged without the consent of his creditors, the courts have no concern; it belongs to the lawmakers.'

* * *

"The framers of the Constitution were familiar with Blackstone's Commentaries, and with the bankrupt laws of England, yet they granted plenary power to Congress over the whole subject of 'bankruptcies,' and did not limit it by the language used. This is illustrated by Mr. Sherman's observation in the Convention, that 'bankruptcies were, in some cases, punishable with death by the laws of England, and he did not choose to grant a power by which that might be done here;' and the rejoinder of Gouverneur Morris, that 'this was an extensive and delicate subject. He would agree to it, because he saw no danger of abuse of the power by the legislature of the United States.' Madison Papers, 5 Elliot, 504; 2 Bancroft, 204. And also to some extent by the amendment proposed by New York, 'that the power of Congress to pass uniform laws concerning bankruptcy shall only extend to merchants and other traders; and the States, respectively, may pass laws for the relief of other insolvent debtors.' 1 Elliot, 330. See also Mr. Pinkney's original proposition, 5 Elliot, 488; the report of the committee thereon, 5 Elliot, 503; and The Federalist, No. 42, Ford's ed. 279."

What is there in the provisions of Section 77-B to cast doubt upon its constitutionality? Three items are suggested:

A. The provision that the proceedings are not to be administered expressly as "bankruptcy" proceedings; the debtor is to be called a "debtor" and not a "bankrupt"; and there is to be no adjudication of bankruptcy unless the proceedings fail.

B. The provisions for leaving the debtor in possession and control of his property.

C. The provisions for the modification of stockholders' as distinct from creditors' rights in the process of reorganization.

Absence of Adjudication of Bankruptcy.—It is, of course, immaterial whether a statute is called a bankruptcy act or not if it is truly such. It is clear that 77-B has all the elements of a proceeding in bankruptcy, —a judicial sequestration of the debtor's property and its distribution among his creditors on an equitable basis, with an ultimate discharge of the debtor.

We have had proceedings very nearly resembling these in the respects in question, at least since the amendment of 1910, which permitted compositions in bankruptcy before and without adjudication. As Mr. Justice Brandeis points out in *Nassau Works* v. *Brightwood Co.*, 265 U. S. 269 (1924), it was stated by the District Court for the District of Massachusetts:— "In recent years more than two-thirds of the composition cases in this district have been without adjudication." (Note at bottom of page 272).

The Court found no difficulty in *Nassau Works* v. *Brightwood Co.* with the proposal of a composition in bankruptcy without adjudication and, indeed, the reasoning of the Court is expressly based on the assumption that a composition without adjudication is a valid exercise of the power of Congress on the subject of bankruptcy, although the Court points out in *Nassau Works* v. *Brightwood Co.* and in the prior case of *Cumberland Glass Co.* v. *DeWitt*, 237 U. S. 447, 454 that a composition proceeding is "in some respects outside of the Act." "True, the composition proceedings arise from the bankruptcy proceedings, and this part of the statute is to be construed with the entire Act . . . *Wilmot* v. *Mudge*, 103 U. S. 217."[2]

Wilmot v. *Mudge*, in referring to the subject of compositions, justified the provision for compositions under the Act of 1874 (June 22, 1874, Ch. 390) by pointing out that there was no power in the debtor to invoke a remedy by composition until proceedings in bankruptcy had been commenced by him or against him under the bankruptcy law. Proceedings under 77-B, to some extent, lose the strength of this argument since they may be begun as independent proceedings. Nevertheless, the proceedings may terminate in ordinary bankruptcy proceedings, (pars. i and k of Section 77-B). However euphemistically the proceedings may be entitled, it is, nevertheless, true that the commencement of a proceeding for reorganization under 77-B is the commencement of a proceeding which may result in ordinary bankruptcy administration and can be prevented from such only by the approval of the requisite percentage of the debtor's creditors or of the Court.

Provisions for Leaving the Debtor Corporation in Possession and control of its Property.—The provisions of the statute permitting the debtor to remain in possession and control of its property in the discretion of the Court are novel. However, they would hardly seem to be sufficient to change the nature of the proceeding. The debtor, although left in possession of its property, holds the property as trustee (subparagraph c). Whether this be regarded as an extension of the "trust fund theory" (*Hollins* v. *Brierfield Coal & Iron Co.*, 150 U. S. 371) or merely in effect designating the officers of the debtor corporation as the trustees, the essential nature of the proceedings are not affected.

Provisions for the Modification of Stockholders' as distinct from Creditors' Rights.—The statute, in dealing with stockholders' rights and providing for their possible modification, of course goes beyond anything heretofore done in any bankruptcy act in this country. The statute is not entirely clear as to the extent to which the Bankruptcy Court will coerce a dissenting stockholder against statutory provisions protecting minority stockholders in the state of incorporation. It would seem as if the statute goes to the extent of such coercion. Assuming that it does, it is nevertheless still true that the essential nature of the statute as a proceeding in bankruptcy is not changed by such provisions. They are merely incidental to and in aid of the ultimate and principal purpose of the statute. It must be remembered that the proceedings are in any event confined to corporations who are unable to pay their debts, either because their liabilities exceed their assets or because the nature of the assets and liabilities is such that the liabilities cannot be met as they mature. Except for the intervention of the Court or the assent of the creditors, a winding up of the corporation must follow in which the assets will be administered "on the theory that any equity belongs to the creditors and stockholders rather than to the corporation itself" (Hollins v. Brierfield Iron Co., 150 U. S. 371, 383.) In such winding up proceedings the stockholders, as equitable beneficiaries of the trust, stand in the same position as creditors, although postponed in rank.

Having in mind the frequent necessity in order to effect a reorganization at times of substituting stockholders' interests for creditors' interests, dealing with stockholders' interests is clearly an incident of the main purpose of the statute.

As Mr. Justice Capron said in the Note to *Nelson* v. *Carland*, 1 Howard 265, 277:

2. Cumberland Glass Co. v. DeWitt, 237 U. S. 447 at 454.

"In considering the question before me, I have not pretended to give a definition; but purposely avoided any attempt to define the mere word 'bankruptcy.' It is employed in the Constitution in the plural, and as part of an expression; 'the subject of bankruptcies.' The ideas attached to the word in this connection, are numerous and complicated; they form a subject of extensive and complicated legislation; of this subject, Congress has general jurisdiction; and the true inquiry is—to what limits is that jurisdiction restricted? I hold, it extends to all cases where the law causes to be distributed, the property of the debtor among his creditors; this is its least limit. Its greatest, is the discharge of a debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject—distribution and discharge—are in the competency and discretion of Congress."

Conclusion

Accordingly, while Section 77-B introduces into the Bankruptcy Court new ideas and new faces, it clearly falls within the "subject of bankruptcies" and is constitutional.

THE ATTORNEY GENERAL'S CRIME CONFERENCE

(*Continued from Page* 8)

as personnel goes. But they must be freed of their shackles.

"They should be able to arrest a man when they want to arrest him, and not have their arm stayed by the more powerful hand of some town or county or State politician. They should be paid salaries commensurate with the efforts they put forth and the dangers they undergo. They should be selected from the ranks of those unhampered by political domination, instead of being forced, as is too often the case, to seek the office from some political ward-heeler. They should be armed sufficiently to enable them to cope with the type of criminal which exists today, instead of being forced to face desperate men with inadequate weapons. Above all, these officers upon whom we depend for our life, our possessions and our pursuits of happiness, should be given the security of their jobs. Honesty, integrity, ability, education and courage should be the requisites of success as a law enforcement officer. I am forced to say that in too many communities, the requisites are an ability to vote for the right man, and the pandering instinct necessary to hold a position which can be plucked away almost at any moment upon the displeasure of a political boss. Deference to wealth and privilege, deference to political pull, in such cases, is shameful betrayal of society.

"Certainly, it is a tribute to our law enforcement bodies everywhere that they accomplish what they do in spite of the tremendous handicaps which are laid upon them. In the majority, they are grossly underpaid, leaving them open to temptation. Yet in the main, your average law enforcement officer rarely yields. Further he is courageous even to death, and no man can give more. Yet time after time, he is forced to see criminals slip through his hands, or walk free from the courts because that criminal knows some other equally criminal person who controls enough votes to swing an election, and thereby control the destinies of municipal or State employees. No greater forward step could be taken by this conference than a determined effort toward the utter divorcement of politics from the apprehension, the punishment and the detention of criminals. Not until this separation has been accomplished will law-breakers be forced to obey our statutes. Not until courts can dispense adequate justice without fear of political reprisals, will the necessary terror of punishment reach the heart of the underworld. And not until prisons are actually prisons, free from malfeasance or non-feasance in office, will we be safe from the so-called escapes by which desperate men periodically swarm forth from penitentiary gates to rob and pillage and murder. Let a man succeed or fail in his job by merit or lack of it, and let that be the entire standard upon which he is judged. . ."

Mr. Hoover then gave details of the training of men for service in the Division of Investigation, spoke of the importance and usefulness of the Identification Unit and its kindred sections, criticised the "easy parole" but declared himself in favor of the principle of parole properly applied, spoke of the ever-increasing necessity for a national teletype or radio broadcast system of police communication, and, finally, expressed his belief that a National Training School for law enforcement officers is a wholesome and necessary venture.

Modern Youth and Crime

"Modern Youth and Crime" was the subject of a paper by Charles W. Hoffman, Judge of the Domestic Relations Court of Cincinnati, Ohio. Judge Hoffman's paper was a powerful plea for a better social understanding of, and attitude towards, the problem of child delinquency, which is of course the usual prologue to a later crime career. He distinguished between the function of the police and criminal court judges, which is strictly to administer the criminal law and impose penalties, and that of the juvenile court. He said:

"The juvenile court, however, under the law has no place for judges who adhere to the traditional procedure and have no faith in the redemptive power of science and medicine, of education and religion, but rest their case on the efficacy of pain and punishment to redeem and reform. The juvenile court may not be able to stop the constant flow of delinquency and crime, but it can, however, in any event fulfill its primary mission which is that of standing like the walls of a fortress between a child and the cruel and medieval methods of the criminal courts incident to the trials of children."

Social Patterns and Juvenile Delinquency

He added that it has been generally accepted that crime has its origin in childhood, but that nothing comprehensive by way of social planning has been suggested to meet a situation which is so intimately related to the problem of crime. Some of the things which influence children in the wrong direction are given:

"Because of bad ventilation, mal-nutrition, recent illness, physical defect, poverty, quarreling in the home; inconsistency of the moral and social standards and concepts of the home with those of the school and the community, children are handi-

capped so greatly that they cannot compete with their classmates or the children of their neighborhood. As stated by Dr. Ira S. Wile, hope for success sinks into hopelessness, hopelessness into indifference and indifference finally into an apathy and inactivity which the child accepts as final. He loses his courage and acquires a sense of inferiority. If at this period he receives no sympathetic and understanding care and treatment it will not be long until he is numbered among the delinquents, which marks the beginnings most probably of a criminal career. . ." He continued:

"It is the local situation or the social environment in which delinquents live and strive for recognition and happiness that in the end determines their destiny. Delinquency is the objective expression of attitudes toward life, living, conventions and proper conduct. It is a state of mind not only of children and youth but of the citizens who direct and control the moral, social and economic affairs of the community in which they reside. The anti-social acts of children and of older boys and girls are directly related to the social and moral patterns of the family, the neighborhood and the larger areas with which they come in contact; not the social and moral patterns that exist only in the mind and are subjective, but those which the adult population exemplify and express objectively in their conduct and behavior."

Judge Hoffman expressed the opinion that we must enter into the development of larger social reforms if we are to save a larger percentage of our children from delinquency and adult crime. The work must be undertaken from social, cultural and economic angles.

Commercial Racketeering and the Codes

Hon. John J. Bennett, Jr., Attorney General of New York, spoke on "Commercial Racketeering"—one of the most pressing of our large city problems. He defined his subject as "the direct intervention by criminals in trade disputes of all kinds," and pointed out that often this intervention was due to members of the business community who felt that it was the only way in which they could protect themselves against unscrupulous competitors. His experience had led him to believe that "codified regulation of industry would relieve the employer of the necessity of working strong-arm methods to preserve his interests against unfair competitors. With the law behind him, he could legally eliminate his price-cutting competitor and thus secure for labor fair wages, fair hours of employment and decent working conditions. As a result, all employers would operate on an equal footing and the racketeer no longer would find a fertile field and ready market for his nefarious activities."

Lack of Intelligent Collaboration of Agencies

Dr. Sheldon Glueck, of the Harvard Law School, spoke on "The Place of Proper Police and Prosecution in a Crime Reduction Program." Dr. Glueck began by pointing out that a substantial reduction of crime cannot be brought about by any single improvement in the processes of justice but is dependent upon a "fundamental raising of the standards of performance in all departments of criminal justice and is equally dependent upon forces and agencies beyond the control of those who man the engines of justice." Speaking to his specific subject, he said that a major weakness pervading all effort to raise efficiency is the fact that in practice there is not that intelligent collaboration of the agencies of justice that is indispensable to effective action. Moreover, complicating the problem, there is an internal inconsistency in the laws upon which the whole structure of criminal justice has been raised.

Three-Fold Aspect of Police Work

Dr. Glueck then discussed the three-fold aspect of the work of the police: first, as our first line of defense against criminals; second, as the only representatives of organized society with which most of us have any acquaintance; and third, as a constructive agency in preventing the origin and development of criminal careers. He pointed out certain deficiences under all three heads, and then turned to the public prosecutors, saying in that connection that "so long as the District Attorney's office in the large American city is organized and staffed in a manner that lends itself to possible manipulation by petty politicians, the heart of criminal justice will miss many a beat." As aids to the improvement of conditions he endorsed the Ministry of Justice, the development of realistic codes of criminal procedure in which the underlying principles will be carefully worked out and directed to clearly conceived ends, and preventive efforts, under wise leadership and enlisting the support of the entire community, to stop crime at its source.

Growing Utility of Interstate Compacts

Mr. Gordon Dean, special attorney for the U. S. Department of Justice, spoke on a subject of increasing importance, "Interstate Compacts for Crime Control." This very useful device has not been employed very often in the past, but its possibilities have been greatly augmented by the Congressional Act of 1934 which "gave a blanket Congressional consent in advance to all compacts entered into by any two or more States in the field of the 'prevention of crime and the enforcement of their respective criminal laws and policies.'"

"This statute," Mr. Dean continued, "did two significant things: It facilitated the procedure for the establishment and enactment of such compacts by dispensing with the time-consuming task of securing congressional consent to each separate compact. Second, at a time when appeals were being made to the federal government to assume the entire burden of repressing crime it reminded the states that, by cooperative effort in the form of compacts, the states themselves could deal with many non-local crime problems."

Mr. Dean called attention to four principal fields in which such compacts might probably be utilized and briefly discussed each. The four fields are: "(1) the arrest of persons who have fled from one state to another, by pursuing officers of the first state; (2) the return of witnesses who have crossed state lines but who are essential to the prosecution of a criminal case in the state from which they have fled; (3) the establishment by two or more states of joint agencies, such as crime detection agencies, crime laboratories, or joint police units; (4) the supervision of persons in one state who have been paroled or granted probation in another state."

He concluded with the statement that there are crime problems which transcend state lines, but which nevertheless do not come properly within the purview of the national government; and there is a

fair prospect that, given such a problem, it may be solved through the cooperative effort of neighbor states in an intelligent utilization of the inter-state compact.

Editors Present Newspaper Attitude

Mr. Grove Patterson, President of the American Society of Newspaper Editors and Editor of the Toledo Blade, presided at the third session, devoted to the very important subject of the relation of the press to the crime problem.

The first address on the program was made by Mr. Paul Bellamy, Editor of the Cleveland Plaindealer, and it was entitled "Why Print Crime News?" Mr. Bellamy said there were two schools of thought on this subject—one adhering to what he called the hush-hush theory and the other to the realistic theory. He was a firm adherent of the latter. He did not defend the publication of crime news for the mere purpose of creating a sensation which can be sold profitably to newspaper readers. But he was firmly convinced that we could not make a better society by the hush-hush method.

Mr. Bellamy pointed to the great unanimity of opinion which has time and again been obtained for the American press in time of national and local peril and declared that "when crime in America threatens to get out of hand, I think you will always find that it is possible to get powerful and well-nigh united support behind the law-enforcing agencies."

Mr. Stanley Walker, City Editor of the New York Herald Tribune, was the next speaker, and his subject was "The Newspaper and Crime." He found that there was a good deal less criticism of the newspapers for printing crime news than there was ten or fifteen years ago. This was due to several reasons. There had been a vast improvement in the methods of reporting criminal activities; today the job is done more factually than formerly, with more cold and revealing details. Again, except in a very few extremely sensational newspapers, the lawbreaker is portrayed exactly as he is, with as little sobbing and straining for effect as possible.

Mr. Walker maintained that any serious attempt at reform must be preceded by newspaper publicity, and the crime problem was no exception to the rule.

Opportunities of Press in Crime War

In an address entitled "The Opportunities of the Press in the War Against Crime" Mr. Fulton Oursler, editor of Liberty Magazine, dwelt on the golden opportunity for all the major news and entertainment agencies to stir the public from its apathy from its misguided sympathies, and to promote its active enlistment on the war against crime. As for the publication of crime news, he could not adopt the unrealistic attitude of opposing it as long as crime had not been eliminated from our daily life. The best American newspapers show gangsters, thugs and racketeers as they really are. There are offenders who do not, but he thought they were relatively few.

The Role of the Radio

Speaking of "The Role of Radio in an Anti-Crime Movement," Mr. H. V. Kaltenborn, Radio Editor and News Commentator, stated that "radio's most obvious service in the prevention of crime and the apprehension of criminals is in connection with the police radio systems installed since 1928." At the beginning of this month 203 licensed transmitters were in operation in as many separate communities, "but for years to come large areas will rely on the commercial broadcasting stations to lend their facilities for police work. The unanimity with which stations have cooperated in such work, sometimes sacrificing revenue, indicates that the broadcasting industry is developing that sense of public service to which we have long been accustomed from the press."

"The Screen's Contribution to the Prevention of Crime" was the title of an address by Carl E. Millikin, Secretary of the Motion Picture Producers and Distributors of America. The industry, he said, joined in the hope that the Conference might be the means of developing a program of action for the prevention, suppression and general reduction of crime in the United States. He was empowered to offer to it the cooperation of the leading producers and theatre owners of the country.

Dean Charles Clark of the Yale Law School presided over the fourth session, which was devoted to prosecution and certain other aspects of the criminal process.

Mr. Joseph P. Murphy, Chief Probation Officer of the Essex County (New Jersey) Courts, read a paper entitled "Does Conviction Mean Punishment?" Mr. Murphy gave a great many interesting statistics to show the inadequacy of statistics on this point. The reports did not show how many offenders are convicted in our courts, nor what proportion of those convicted the committed offenders represent, nor how many go unpunished, nor the number released on probation. Again, there is the question of whether probation, so largely employed, is to be regarded as a form of punishment. Moreover, wholly apart from the judicial and administrative disposition, there are many forms of real punishment which society visits on one who has been convicted of crime, and these are to be considered in making up the whole picture. Coming back to probation, which he discussed at length, he rejects the theory that it is to be classed among the dispositions in which punishment is not imposed and regards it as a distinctive form of individualized disciplinary treatment. He concludes that it does not encourage, but prevents crime, when it is properly administered, and, after stating the causes of its failures, declares that courts should be encouraged to use it more frequently, but with due discrimination.

"Are the Criminal Courts Doing Their Duty?"

Mr. Ferdinand Pecora, member of the Federal Securities Commission and formerly Active District Attorney of New York County, spoke on "Are the Criminal Courts Doing Their Duty?" Mr. Pecora found that some of them were not. Justice cannot follow where prosecutors and judges are politically minded, nor where they are chosen, not so much for their recognized ability and integrity, as for their political subserviency. Moreover, he continued, there are instances where our criminal courts have failed in their duty, not because of the ineptitude of judges, but because of archaic laws of procedure, and of substantive law. He referred particularly to the constitutional provision against self-incrimination, which he thought unnecessary and unwise, the undue cross-examination on collateral issues now permitted, which tends to confuse the

jury, and the requirement for a unanimous verdict, which often thwarts justice.

Prosecuting Agencies—Two Views of Centralization

Mr. Gilbert Bettman, of Cincinnati, spoke on "Centralization of Prosecuting Agencies." He declared the plan was logically unnecessary, historically unsound, humanly impracticable and tended towards the creeping paralysis of bureaucracy and away from a virile democracy, and gave his arguments under each of these heads very forcibly. "The answer, therefore, offered to the question propounded," he concluded, "is: cooperation between locally elected prosecuting attorneys and the State's Attorney General, with the reserve power of substitution in emergencies, but for the reasons given above, not centralization."

The opposing view was expressed in an able paper by Mr. George Z. Medalie, of New York, who pointed to the political and other difficulties which often handicap prosecution under present conditions and declared that "until the district attorney or prosecuting officer is removed from local political control and the responsibility for his appointment and continuance in office is vested in the highest responsible officers of the State, this condition will undoubtedly continue to the point of public nausea." His address was entitled "Effective Prosecution—A Method of Crime Prevention."

The Lawyer and the Psychiatrist

"Judicial Versus Administrative Process at the Prosecution Stage" was the subject of a paper by Dr. William A. White, Superintendent of St. Elizabeth's Hospital. Dr. White began by pointing out the fundamental difference between the psychiatrist and the lawyer: the first is primarily interested in the actor, that is, the individual, whereas the lawyer is primarily interested in the act. This is a perfectly natural division of interests and basically constitutes the reason for fundamentally different points of view by the two professions. However, as opposing theories as to the origin of law have never interfered with the enactment of laws by legislatures, he felt sure that the different points of view of the lawyer and doctor need be no serious obstacle, but are rather only a challenge to a meeting of minds upon methods of procedure which will advance the present situation.

"I believe," he concluded, "that the highly individualized point of view of the psychiatrist and the highly evolved social point of view of the legalist will meet and face common objectives, and will be able, therefore, to cooperate in details for a common purpose. My experience on various committees has led me to believe this; and in any case, as I have already stated, I do believe that action is too frequently 'sicklied o'er with the pale cast of thought,' and that dialectics can create difficulties which the necessities of action will dissolve."

Hon. Scott M. Loftin, President of the American Bar Association, presided at the fifth session, and opened the proceedings by telling what the American Bar Association has done and is doing to cope with the crime situation. The Association is carrying out a National Bar Program and the first subject on that program is Criminal Law and Its Enforcement. But long before this latest undertaking in the field it had been working on the problem through its Section on Criminal Law. This Section has confined itself largely to the field of study and report—in addition to establishing cooperative relations with other important agencies in the criminal law field—but the Commissioners on Uniform State Laws have drafted and recommended to the various States for adoption five important laws. The Uniform Criminal Extradition Act has already been adopted in ten States and the other four in a smaller number of jurisdictions. And as a result of the Association's recommendations, a committee of the Conference on Uniform State Laws is now engaged in drafting an act for the creation of State Departments of Justice to unify the law enforcement agencies within each State.

Chairman Loftin then told of the recommendations on this subject which had been adopted at Milwaukee—nearly all of which recommendations, incidentally, found a place on the program finally adopted by the Conference. He then took up another subject on the National Bar Program—the selection of judges—and said that the Association was seeking to have all Bar Associations study ways to improve the choosing of the judiciary in their States. The subject is one of the greatest importance. "In the final analysis," he said, "the desired end is to secure an independent judiciary of the best qualified lawyers, able, fearless and courageous. A system that does not accomplish this purpose will not meet the situation. The public must understand the necessity of demanding and requiring proper standards of fitness for our judicial officers, and of having absolute independence of thought and action in judicial decision."

"Lawyers generally," he concluded, "are working on deficiencies in our law enforcement, which we think we are especially qualified to attack, and have strong hopes that constructive action will result from our efforts."

Mr. James A. Johnston, Warden of the United States Penitentiary at Alcatraz, California, spoke on "The Function of the Modern Prison." Warden Johnston enumerated the reasons for which people were sent to prison and concluded that he had "come to the conclusion that all of these reasons are interrelated in serving one prime purpose—the protection of society." He emphasized the importance of firm discipline and of the proper sort of occupation for those imprisoned.

Work, the Prime Necessity for Prisoners

"The great necessity in prison is work," he said. "If I had to manage a prison upon condition that I make my choice of one thing, and only one, as an aid to discipline, as an agency for reform, for its therapeutic value, I would unhesitatingly choose work—just plain, honest-to-goodness work. Of course, I wouldn't like to have to concentrate so on a choice and it would be unwise to be so restricted. Physical examination, medical treatments, bodily repairs, educational opportunities, spiritual guidance, psychiatry, psychology, are necessary and helpful. But the habit of work is what men most need."

Warden Johnston closed by pointing out the youth of most offenders and the supreme importance of early measures to discover and treat tendencies and to give them the right direction. Prisons have an important part to perform, but "when all is said and done, the finest prison we can build will stand as a monument to neglected youth."

"Crime, the Community and the Lawyer," was the

subject of an address delivered by Hon. Earle W. Evans, former President of the American Bar Association. Mr. Evans pointed out the menace and extent of the crime problem today and particularly emphasized the necessity for the recognition and discharge of responsibility by the individual citizen. "Whenever the people have properly exercised their rights and discharged their duties as citizens, life and property have been well protected. When, however, they have not shown real, good citizenlike interest in governmental matters, protection has invariably been inadequate. Our government must go forward on the basis of participation by and protection of our citizens or not at all."

The Special Responsibility of the Lawyer

Speaking of the special responsibility of lawyers in this connection, Mr. Evans said that "in an abstract sense lawyers are no more responsible for laxity of governmental functionings than anybody else, but viewing the question in another and more practical way, they are, always have been and should be held to a higher degree of accountability. They have in the first place the increased responsibility that men of experience and superior ability always have. Government is a subject peculiarly within their knowledge and governmental functionings are an essential part of their day's work. They know the underlying fundamental principles as no one else does or can. They can diagnose government weaknesses and defects and prescribe and administer efficacious remedies better, vastly better, than can others. That ability in and of itself carries a responsibility for government greater than that which rests upon any other class; and it is sufficient warrant for the demand made upon members of the bar at this critical juncture."

"Crucibles of Crime"

Hon. Joseph C. Hutcheson, Judge of the Circuit Court of Appeals of the Fifth Circuit, gave a powerful exposé of the intolerable and crime-breeding conditions in many local jails and a plea for a remedy of the situation. His attention was called to it when he went on the bench and he "was amazed at the heart-breaking, morale-destroying indifference of society in maintaining the system" which he saw in force. Leaving other considerations aside, he was impressed with the economic and spiritual loss to society through the effect on keeper and kept.

He concluded by declaring that "it is not under the banner of sentiment that we are making this push. It is in the name of the enlightened commonsense of simple social justice . . . that we are moving on these crucibles of crime."

Dr. Wilmer Souder's address on "Scientific Crime Detection" came next on the program. Dr. Souder is Chief of the Identification Laboratory of the Bureau of Standards of the United States Department of Commerce.

Mr. Peter J. Siccardi, of Hackensack, N. J., President of the International Association of Chiefs of Police, presided at the next session and introduced the proceedings with a brief talk on "Pardon and Parole." He summed up his conclusions, based on his practical experience, as follows:

"It is my belief that while every effort should be made to separate the first offender from hardened criminals, particularly juvenile offenders, and to return them to a gainful occupation, I also feel that second offenders ought not to be pardoned or paroled as a rule, and that possibly persons convicted of a third felony ought to be removed from society during the remainder of their lives. Parole and pardon powers should probably be used liberally in the case of first offenders except after the commission of crimes of violence and certainly should be used most sparingly, or not at all, in the case of hardened criminals."

Gravity of the "Fire-Arms" Situation

Hon. J. Weston Allen, former Attorney-General of Massachusetts, spoke on the gravity of the problem presented by the ease with which firearms can be secured. He told of what had been done and criticised some organizations which had interposed obstacles and concluded as follows:

"I believe that no issue before this Conference presents a more serious emergency than that of the present need for legislative action to control the possession of firearms, and I hope the Conference will not adjourn without an appropriate resolution, calling upon the Governors of the several states to follow the example of the Attorney-General in advocating a greater measure of control and in urging upon the legislatures prompt and vigorous action to secure legislation which, by requiring licenses for the purchase of pistols and revolvers and of other arms capable of being concealed on the person, and by requiring the registration of such firearms by those in possession, will thereby make it possible to trace the gun in the hands of the unlawful holder and fix the responsibility for its illegal possession."

"Parole from the Prosecutor's Standpoint" was the subject of an interesting paper by Hon. A. C. Lindholm, former Prosecutor of Hennepin County, Minnesota, and at this time President of the State Board of Parole of that State. Mr. Lindholm stated his conclusions as follows: "Parole properly administered by a parole board with the courage of its convictions is the only sound way to determine the length of a prisoner's sentence while at the institution;" and "A parole system can be successful only if a fairly wide latitude is allowed a parole board in determining the time for release." Like other speakers, however, he thought that "the real root of the crime problem lies far deeper than punishment or parole. The prevention of it must begin in the home, society as such must assume its responsibility by being less tolerant of things that teach crime and make it spectacular, and an awakened public opinion must demand of every public official honesty, efficiency and an eye single to the best interests of the public."

State and Federal Spheres of Crime Enforcement

Hon. J. C. B. Ehringhaus, Governor of North Carolina, spoke on "The State's Crime Problem." He was sure the delegates appreciated the sanity displayed by the Attorney General in his approach to the problem. In carefully considered language Mr. Cummings had expressed the natural limitations of Federal power and had insisted on the integrity of local and State governments in criminal law enforcement. He felt that the Federal Government could go much farther even than it has gone without infringing upon the inherent powers of the State Governments. As he saw it, the great weakness of local law enforcement sprang from the disorganization of local law enforcement agencies within the State and inadequate personnel. In remedying these defects the people of the States

realize the importance of leadership and education and he believed that it was along these lines that the Federal government could make its next great contribution.

An Intelligent Protection Policy

"A Protective Penal Policy" was the subject of the next paper—presented by Mr. Sanford Bates, Director of the Bureau of Prisons of the United States Department of Justice. Speaking of Probation as an element of such a policy, he stated that "experience in Massachusetts and New York indicates that the free use of probation may be undertaken and at the same time the total volume of crime may be reduced."

Mr. Bates then outlined the methods employed in Federal penitentiaries, with the object of preparing the prisoner better for the day of his discharge and thereby protecting the public against further criminal acts. Turning to "Parole" he asserted that we must not make the mistake of condemning the whole system because of the fact that it has occasionally been maladministered. "The theory behind parole is correct." He then gave some statistics showing that the percentage of parole prisoners violating their parole is extremely small, in spite of an apparent general opinion to the contrary.

Lack of space unfortunately prevents even a brief reference to the contents of other important papers presented at the remaining sessions of the conference.

The seventh session was presided over by Senator Henry F. Ashurst, Chairman of the Judiciary Committee of the Senate; the eighth, by Hon. Hatton Sumners, Chairman of the Judiciary Committee of the House of Representatives; the ninth, by Mrs. Grace Morrison Poole, President of the General Federation of Women's Clubs; and the tenth by the Attorney-General himself.

Following is a list of the addresses delivered at the remaining sessions:

"How the Department of Justice Functions," William Stanley, Assistant to the Attorney-General of the United States Department of Justice; "The Lawyer's Part in Improving Criminal Law Enforcement," Will Shafroth, Denver, Col.; "Organizing the Community to Combat Crime," Earl Warren, District Attorney, Alameda County, Berkeley, Cal.; "Coordination of Police Units," Bruce Smith, Institute of Public Administration, New York City; "The Federal Government and the Crime Problem," Joseph B. Keenan, Assistant Attorney-General, United State Department of Justice.

"Importance of Criminal Statistics," Thorsten Sellin, Professor, University of Pennsylvania; "The Narcotic Problem," H. T. Anslinger, Commissioner of Narcotics, Bureau of Narcotics, United States Treasury; "Restating Criminal Law and Improving Criminal Procedure," William Draper Lewis, Director American Law Institute, Philadelphia, Pa.; "State Legislation in the Field of Criminal Law Administration," Henry Toll, Director, American Legislators' Association, Denver, Col.; "State Police," Donald Leonard, Captain, Michigan State Police, Detroit, Mich.

"Social Aspects of Crime Prevention," Kenyon J. Scudder, Chief Probation Officer, Los Angeles County, Cal., "The Story of the Gang," John Landesco, Chicago; "Police Tenure and Police Personnel," Andrew J. Kavanaugh, Chief of Police, Fairport, N. Y.; "Old and New Methods of Dealing with Vagrants and Delinquents," Katharine Lenroot, Chief, Children's Bureau, United States Department of Labor.

"Lessons of Crime Conference," The Attorney General of the United States; Address, Bishop Francis J. McConnell, Methodist Episcopal Church, New York City.

INSTRUCTIONS FOR PARTICIPANTS IN 1935 ESSAY CONTEST

Conducted by
AMERICAN BAR ASSOCIATION

Pursuant to Terms of Bequest of Judge Erskine M. Ross, Deceased.

Those eligible to participate:

Members of Association in good standing, exclusive of previous contest winners, officers, members of Executive Committee, and employees of the Association.

Subject to be discussed:

"The Barrister and the Solicitor in British Practice: The Desirability of a Similar Distinction in the United States."

Length of Paper:

Not more than 5,000 words of text, excluding footnotes. Each paper to be submitted in triplicate (to expedite committee's action); original to show number of text words on each page.

Amount of prize to be awarded:

One Thousand Dollars ($1,000.00) in cash.

Time when papers must be submitted:

On or before March 1, 1935.

Assignment of interest:

All entrymen will be required, in lieu of an entry fee, to assign to the Association all right, title and interest in the discussion submitted, with the understanding that all discussions not desired for further use by the Association, will be returned to the respective authors, and the interest of the Association therein waived.

Person to whom essay and identifying number should be sent:

Olive G. Ricker, Executive Secretary,
American Bar Association,
1140 North Dearborn Street,
Chicago, Illinois.

Instructions for preparing and mailing essay:

1. Papers submitted must be typewritten on plain white paper, letter size, (8½ x 11), and be mailed without folding, in plain envelope furnished for the purpose.

2. Only the number assigned to contestant may be attached to the essay; any other identifying number, name or mark thereon will disqualify the entry.

3. Quadruplicate number, attached to card or sheet of paper, giving full name and address of contestant must be mailed in separate plain sealed envelope, also furnished to contestant, for purpose of identification after winning paper is selected.

For convenience of contestants there will be forwarded upon request:

1. Quadruplicate numbers in sealed envelope.
2. Large addressed envelope for mailing essay.
3. Small addressed envelope for sending identifying number with name and address of contestant.

SOME RESEARCHES INTO THE MATTER OF MINIMUM FEES FOR LAWYERS

How the Fee Problem is Dealt with in Great Britain—The "Refresher" Paid to the English Barrister under Certain Conditions—American Localities in Which a Minimum Fee Schedule Is in Operation—Situation in Ohio—American Bar Association Committee's Ruling on ObligatoryFee Schedule—Fees in Greece and Rome—Amounts Paid to Some Leading English and American Lawyers*

By Cary R. Alburn

Chairman of Minimum Fee Committee of Cleveland Bar Association

NOW that the smoke has cleared away from the Judicial battlefield I wish to express my appreciation for this honor and opportunity of addressing this great association of lawyers. I also wish to offer my congratulations to the candidates for judges who were successful at the recent election. To those less fortunate candidates I commend the philosophy of Epictetus who taught: "Desire not that the things which happen should happen as you wish, but wish rather that the things which happen should be as they are and you will have a tranquil flow of life."

This dinner and the presence of our newly elected judges reminds me of the celebrated dinners given not to but by the Sergeants-at-Law in England in Chaucer's time. We are told that they were great and opulent personages and the most learned members of the profession; and that, upon assuming the robes of office, they were bound to give a "great dinner like to the feast of a king's coronation," which was to "continue for the space of seven days." The historian recounts that at one such feast were 25 great beefs, 100 fat muttons, 51 great veals, 34 porks or boars, 91 pigs, 19½ dozen capons, innumerable pullets, pigeons, larks and 14 dozen swans; and that gold rings were given to every important personage and countless liveries of cloth were bestowed upon friends and acquaintances.

Now that the Cleveland Bar Association has assumed the prerogative of electing judges may I suggest that it take heed of this good old English custom and exact from each successful candidate for judge a pledge to provide a feast for lawyers similar to that furnished by the Sergeants-at-Law in the days of old.

The occasion for this discussion on minimum fees is a series of complaints as to undercutting on the part of practicing attorneys. It is reported that lawyers have been handling forcible entry and detainer cases for fees consisting solely of the refund from deposits for court costs; that divorce cases are taken at fees ranging from $10 to $25; that some fees in bankruptcy cases, including drawing of schedules and obtaining discharge, are as low as $25; and that new corporations have been incorporated and qualified under the Blue Sky Law for a fee of $25.00.

With the assistance of my able associates on the Minimum Fee Committee, Mr. Adrion and Mr. Ryan and your good Secretary we have made some investigations on this subject of fees in Great Britain, Canada and the United States. In England, as you know, the profession is divided into two classes, solicitors and barristers. The fees of solicitors in contentious cases are statutory. In non-contentious cases they are regulated by rules of the House of Lords, Privy Council, Supreme Court, County Court and Court of Bankruptcy. One of the leading solicitors of London informs me that the Standard Handbook for fees or costs of solicitors in the Supreme Court runs to 1233 pages of closely printed matter. I have here a table of fees for conveyancing and general business published with the approval of the law societies in Scotland. This table consists of 61 pages of finely printed matter. In Ireland and Canada similar procedure is followed. The more modern firms, however, are beginning to charge an omnibus fee to clients in the belief that in these times business men are more concerned with totals than with details. A client who thinks he is overcharged has the privilege of submitting the bill to a court official known as a Taxing Commissioner who has the power to strike out any overcharge items and to certify the proper amount payable.

The fees of barristers have always been regarded as a gratuity. The only clients of the barristers are the solicitors. Retainers are rules of etiquette only, but are regulated by rules prepared by the Bar Committee and approved by the Attorney General and the Council of the Incorporated Law Society. All questions as to retainers are settled either by the Attorney General or some leading King's Counsel or by the General Council of the Bar. Retainers are either general or special, a general retainer to appear before Parliament committees being 10 guineas and in all other cases 5 guineas; and special retainers range from 5 guineas down to 1 guinea. In Great Britain and Canada they also have the happy term known as "refresher" fee which is an additional fee paid to the barrister for each succeeding day when the trial of any case exceeds five hours.

Our investigation of minimum fees throughout the United States reveals the following situa-

*Address delivered before the Cleveland Bar Association at a recent monthly meeting. Mr. Alburn attended Oxford University as a Rhodes Scholar (1905-08) and has a degree of B.C.L. from that institution.

tion: the American Bar Association reports: "We do not have any material available on the subject." The secretary of the New York County Lawyers Association says: "There is nothing in the practice here in the nature of a minimum fee schedule and no plan is under consideration for the adoption of one." The secretary of the Philadelphia Bar Association says: "We have no minimum fee schedule at the Philadelphia Bar. I doubt if our Bar would ever press for any such arrangement." From the secretary of the Bar Association in Baltimore comes the word: "A minimum fee schedule has never been enforced or contemplated in Baltimore, nor so far as I know in the seven other judicial circuits of Maryland." The secretary of the Detroit Bar Association reports: "Never to my knowledge has there been a schedule of fees in effect in Michigan." In Los Angeles, where the matter was given consideration, it is felt that there is no way of enforcing a minimum fee schedule and that as a result it would be inadvisable to endeavor to enforce one.

In the United States outside of Ohio, the only places where we have found the minimum fee schedule in operation are New Orleans, Long Beach, Cal., and Allegheny County and Washington County, Pa. New Orleans reports that its minimum fee bill is provided for by the Charter of the Association; that it has been in effect for six years; that it is generally observed by members of the Bar; and that the only criticisms have been that the fees are too high and are helping to keep out of the Association a number of the younger members of the Bar.[1] From Pennsylvania the word comes that the present minimum fee bills have not been in force long enough to justify an opinion as to how they are working in practice and the secretary of the Allegheny County Bar Association expresses it as his personal opinion that such a system is a good thing for the young lawyers as a guide to them in fixing their fees, but that for old lawyers he does not think it can be maintained because of the various elements which enter into the determination of fees.

In Ohio there has been considerable activity in formulating minimum fee schedules. I have here a chart loaned to me by the Ohio Bar Association which purports to show the fees charged on a great variety of subjects in 25 counties throughout Ohio. The counties of Erie and Guernsey have published detailed minimum fee schedules. Voluntary minimum fee schedules have been adopted and lapsed for disuse in Dayton and Cincinnati, but new committees are again at work on them in these cities. In Akron, Youngstown and other places throughout the state the matter is being given consideration. From Cambridge, Ohio, comes word that the Guernsey County schedule is working satisfactorily and has substantially improved the law business. Columbus reports that whenever a committee attempts to prepare such a schedule a great deal of opposition develops from the older lawyers who fear that the minimum fee on the Bar list would be taken as the maximum which they would be allowed to charge. The secretary of the Erie County Bar Association reports that the raison d'être for their fee schedule is to give lawyers, especially younger lawyers, an accurate guide of what the Bar as a whole charges for professional services; but that a small group of fifty or less lawyers such as they have in Erie County, each of whom knows all of the others intimately, presents quite a different problem from a Bar the size of that in Cleveland.

The Canons of professional ethics of The American Bar Association provide that in fixing fees lawyers shall avoid charges which over-estimate their advice on services as well as those which under-value them; that in determining the amount of the fee, it is proper to consider (1) the time and labor required, the novelty and difficulty of the questions involved and the skill required properly to conduct the cause; (2) loss of other business because of the particular employment; (3) the customary charges of the Bar for similar services; (4) the amount involved and the benefits resulting to the client; (5) the certainty of the compensation; and (6) whether the employment is casual or for an established and constant client. And the express injunction is laid down that in fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

A committee of the American Bar Association of which Judge Harris of this Association was a member, in 1930 had occasion to rule upon the question as to whether an obligatory fee schedule violates the canon of ethics to which I have just referred. Its ruling was that an obligatory fee schedule would be a violation of that canon; and that aside from such violation, the committee was of the opinion that any obligatory fee schedule must necessarily conflict with that independence of thought and action which is necessary to professional existence.

From the foregoing discussion you will observe that there are no large cities whose experience is helpful in considering a minimum fee schedule for the lawyers of Cleveland; and that the American Bar has already ruled that an obligatory fee schedule would be a violation of canons of ethics of the American Bar Association. Accordingly, any minimum fee schedule apparently must be a voluntary one. It is also apparent to your committee that this entire subject is closely interrelated with other questions of great importance to the Bar such as:

(1) The education, character and admission to the Bar of law students, questions which in this state through recent action of our Supreme Court are receiving intelligent consideration for the first time;

(2) The enforcement of Rule 28 in protecting the public and the profession from the encroachment of endless lay agencies and arbitrary Government bureaus. Here much can still be done through concerted action of the Bar by discreet publicity, setting up machinery for arbitration by lawyers, legislation and legal action;

(3) The perennial question of selection of judges. On that subject I commend to your consideration the splendid article by Attorney Benesch printed in last Sunday's Plain Dealer. Here it may be noted that in France the appointive system of judges degenerated into the sale of judicial offices

1. Los Angeles writes that its schedule needs revision; that it is generally ignored; and that the Bar has taken no steps to enforce it.

with its attendant evils to the public and the profession;

(4) The question of integration of the Bar. On November 17 there will be a conference on this subject in Columbus which I hope many of you will attend.

In due course the report of our committee on Minimum Fees will be submitted. Meanwhile we shall be happy to receive any helpful communications.

With this preliminary, permit me now to divert your attention away from mundane fees, which in these times are largely hypothetical, and briefly review the matter historically. You will recall that my subject is entitled "Some researches into the matter of minimum fees for lawyers."

The earliest battle for a fee reported in ancient literature is in Homer's Iliad, where we find this glowing account of the trial scene:

"The people thronged the forum, where arose
The strife of tongues, and two contending stood;
The one asserting he had paid the mulct,
The price of blood, for having slain a man,
The other claiming still the fine as due;
Both eager to the judges made appeal.
The crowd, by heralds scarce kept back, with shout
And cheers applauded loudly each in turn.
On smooth and polished stones, a sacred ring,
The elders sat, and in their hands their staves
Of office held, to hear and judge the cause;
While in the midst two golden talents lay,
The prize of him who should most justly plead."

In ancient Greece as in every country where advocacy has been known it has been the custom from earliest times for exertions of the advocates to be given gratuitously. In Athens the celebrated orators Lysias, Isocrates and Demosthenes wrote their best speeches for others to memorize and deliver. Their compensation was not a fee but a gratuity. In the days of Pericles assistants to the public advocate were appointed and were paid one drachma or ten pence per day. Quintilian reports that at Athens there was a law prohibiting a person to plead for another.

From your Biblical knowledge you will recall that among the ancient Hebrews Aaron acted as the mouthpiece of Moses. But Holy Writ fails to record the payment of even a minimum fee to Aaron.

Diodorus Siculus tells us that the ancient Egyptians expressly forbade advocates to plead in their courts on the ground that they darkened the administration of the laws.

In Rome as in Greece the service of advocates from the earliest times was gratuitous. The profession of the law was divided into Patroni Causarum or advocates who appeared in court, and the Juris Consulti or office lawyers who in some families were hereditary.

The Juris Consulti were permitted to receive fees, but apparently were looked down upon by Cicero, the advocate. Absence of the fee system, however, evidently didn't disturb Cicero, for history tells us that from grateful clients he received legacies amounting to 170,000 pounds. The lawyers of Rome were accustomed to promenade in the Forum where clients would approach them and ask their legal opinions. The law students would draw nigh and drink in the words of wisdom. At 17 the law student changed his youthful garb or Praetexta for the Toga Virilis and then was formally introduced in the Forum by a lawyer official as a practitioner in the courts.

Under the Republic in Rome advocates were men of distinguished rank or wealth and all of the great statesmen and generals were lawyers. Public honors were held in high esteem and these rather than fees were their compensation. They became praetors and tribunes and consuls and senators, and when they discharged the duties of their office with fidelity and ceased to practice law they were numbered among the comites or counts and the clarissimi or most distinguished citizens. In the early days of Rome as Lord Macaulay, himself a lawyer, points out in his Lays of Ancient Rome:

"Then none was for a party;
Then all were for the state;
Then the great man helped the poor,
And the poor man loved the great;
Then lands were fairly portioned;
Then spoils were fairly sold;
The Romans were like brothers
In the brave days of old."

Later actions multiplied and fees with corresponding abuses came. Then laws were passed requiring the advocate not to exhibit a sordid avidity of gain by putting too high a price upon his services and under pain of disbarment not to refuse his services to the indigent and oppressed. About 200 B. C. the Cincian law was passed which forbade advocates to charge fees.

As a result, lawyers were so poorly paid that Juvenal, the great Roman satirist, writes in the First Century A. D.:

"Alas! a hundred lawyers scarce can gain,
What one successful jockey will obtain";

and because of the operations of the Cincian law restricting fees, he recommends that those who wish to secure livelihoods betake themselves to Africa or Gaul. Pliny the Younger reports that advocates employed Claquers and that where there was the loudest applause you were certain to find the worst speakers.

With the downfall of the Roman Republic came decadence in the esteem for public office.

Domitian convoked the Senate to determine how a fish known as the turbot should be dressed. Caligula appointed a horse as a Consul. Augustus revived and enforced the Cincian no-fee law but later repealed it in part and fixed a maximum fee. Nero reinstated the Cincian law. Claudius revised the Cincian law, and allowed a limited fee to advocates. But as a rule throughout the history of Rome the compensation of advocates was a gratuity and not a debt just as it has always been in England.

At various times restrictions were placed upon the Bar of Rome. Under Constantine there were two classes of practitioners, the statuti whose practice was limited to one forum, and the supernumerarii who substituted for the statuti in case of vacancies or absence. In Constantinople the statuti were limited to eighty members and in Alexandria to fifty.

In Justinian's time no one in Holy Orders might plead in Court. Women were forbidden to practice law by a decree which, according to Ulpian, provided "that they might not intermeddle in such matters, contrary to the modesty befitting their sex, nor engage in employments proper to men." Among the German tribes advocates were permit-

ted to plead, but significantly were termed Clamourers.

Among the semi-barbarous Muskovites, according to Milton, there were no lawyers. Yet, he informs us, "Justice by corruption of inferiors is much perverted." Thus is disproved the theory of Sir Thomas Moore that the absence of advocates is a sine qua non to Utopia.

Gradually the legal status of the lawyer improved. In the Digest of Justinian we find these words: "praiseworthy and necessary for human life is advocacy, which ought to be remunerated by the highest rewards."

In France during the Middle Ages the profession of the law achieved a proud position. It was known as the *"Noblesse de La Robe"* and was a branch of the nobility equal in standing to the mailed chivalry.

Members of Parliament, from whose number the magistrates were chosen, were called Conseillers and were chosen chiefly from the body of advocates. In the reign of Philip the Fair lawyer Ives de Kaermartin was canonized as a saint. Their rules of practice were in many respects similar to the rules of ethics of the American Bar Association of today.

Later, however, human cupidity entered the picture and Henry III, king of France in need of funds decided to sell judicial offices. The Bar fought valiantly and for a time withstood the pressure from the Crown, but in the succeeding reign and for centuries thereafter judicial offices in France were sold to the highest bidder to the detriment of the profession and the loss of liberty to the country, which fell from its high estate just as in the case of the Roman Empire the sale of judicial offices was a procuring cause of its decline and fall.

In Germany the lawyer is known as the Rechtsanvalt and practices both as a barrister and solicitor. In Hungary lawyers have a thorough training and examination and must be Doctors of Law before attempting to practice. Judges are appointed by the Crown and have life tenure.

In England the lawyers who practiced before lay tribunals originally were shaven clerks. In the reign of Henry III in the Thirteenth Century when the Clergy were forbidden by Statute to practice law they adopted the wig to conceal the tonsure of their heads so that it might not be discovered that they were priests. No counsel were permitted in felony cases until the reign of William IV.

During the Fifteenth Century Fortescue reports that lawyers were held in high esteem; that "knights, barons and the greatest nobility of the Kingdom often place their children in these Inns of Court to form their manners and to preserve them from the contagion of vice."

At the present time no person except members of the Royal family by special dispensation can be called to the Bar in England unless he is a student of one of the Inns of Court. To become a student he must be a gentleman of respectability, and a person of intellectual qualifications. He must not be engaged in trade or be a solicitor or proctor or notary public or clerk in any Court of justice, or Parliamentary agent or agent in any Court or a receiver or accountant or patent or land agent or surveyor or consulting engineer or a conveyancer. He must not be engaged in Holy Orders. After he is registered for from three to seven years and has passed his examinations and eaten his dinners in one of the Inns of Court, he is called to the Bar and becomes an outer or junior barrister, who wears a stuff gown to distinguish him from Inner Barristers or King's Counsel who wear silk gowns. After a period of probation, if he proves satisfactory he is elevated to be one of the King's Counsel or Silks, from whose number the Benchers or ruling body of the Inns of Court are chosen. None but Benchers may be judges and these are appointed by the Crown.

Prof. Simeon Baldwin of Yale and former Chief Justice of Connecticut tells us that in England and the United States the profession of the law has always been over-crowded. But, he adds, "Every calling will be over-crowded which possesses high attraction." Of the 10,000-12,000 English titular Barristers in 1909, not more than 2,000 were in active practice. In England and Wales in 1926 there were nearly 17,000 solicitors. In Paris at the same time there were about 3,000 advocates on the rolls but only about 500 in active practice. In 1920 in England if we added together the barristers and solicitors there were something like one for every eleven hundred of the population. In the United States the proportion was about one to seven hundred.

The fees of some of the leading English and American lawyers may be of interest to you. Sir Edward Coke in one year took in 7,000 pounds. Lord Elden's earnings in 1787 were a like amount. Lord Erksine, the most famous of English advocates, never earned more than 10,000 pounds a year. John Marshall in 1795 earned $4,500, which exceeded the earnings of any other Virginia lawyer. Alexander Hamilton in New York City during the first decade of the last Century had a professional income of between $12,000 and $14,000 a year. In 1816 William Pinckney of Maryland earned $21,000. The first lawyer in New England to gain a practice of $10,000 was Theopolis Parsons of Boston, who, in 1806, was appointed Chief Justice of Massachusetts. Joseph Story in 1811 earned about $6,000 when he went upon the Bench of the United States Supreme Court. Daniel Webster earned $18,000 in 1834 and a maximum of $22,000 in 1836, but these sums included his salary as United States Senator. The largest single fee he ever received was $7,500. My recollection is that Abraham Lincoln's largest fee was $5,000. For arguing the celebrated income tax cases twice before the United States Supreme Court, Joseph Choate received a total of $34,000. Lord Bryce tells us that in 1888 there were possibly fifteen counsel in the United States earning $50,000 a year each.

Without further comment on our noble profession except to note the urgent need by the public and the Government of the trained leadership of lawyers in the present emergency, I shall close with an occular demonstration.

My demonstration will prove to you that the lawyers and barristers of today are the lineal descendants of the hooded monks who at the dawn of history monopolized the practice of the law. The gown and hood which you observe on this young man are the insignia of the B. C. L. degree at Oxford and are the connecting link between the

hooded monk of old and the lawyer of today. The hood is similar to the hood worn by the medieval ecclesiastics except that around the top of the hood were drawstrings which dropped down the front of the gown. The gown, as you will observe, is not the stuff gown but is a silken gown similar to that worn by the Inner Barristers or King's Counsel or Benchers of the Inns of Court and the two silken streamers in the front are the modern counter-part of the original draw-strings on the gown in the Middle Ages.

Recently I received a letter from a distinguished English Barrister who tells me that the work of the ecclesiastical lawyers was nominally charitable and that it was beneath their dignity to accept a fee and that it may also have been contrary to the rules of the Holy Orders; but that as a practical matter, a client with the utmost delicacy dropped a fee into the hood and the lawyer would so far unbend as to pull the strings and so close the mouth of the hood against any dishonest person who might be led into sin by the sight of unguarded and easily available money. We are also told that the Clerk was on hand to indicate to the client what under the special circumstances of the case would be an appropriate present.

This practice of the Middle Ages still maintains in England and my English friend informs me that the barrister of today has no more legal right to collect a fee than the ecclesiastical lawyer of old. The situation, however, has been partly relieved by rules of the Law Societies which provide that any solicitor client who fails to pay over to the barrister fees collected is subject to severe disciplinary measures; and the barrister has the first charge on any funds of the lay client which come into the hands of the solicitor. He is also in this favorable situation, that just as there is no legal minimum fee for the barrister so is there no legal maximum fee; and just as a fashionable Surgeon can command fees in proportion to his reputed skill, so can the Barrister command a "present" proportionate to his reputed skill as an advocate.

THE REMUNERATION OF THE LAWYER IN SOVIET RUSSIA*

BY KENNETH M. THORPE
Member of the Kansas City, Mo., Bar

AS the people of the Soviet Union are governed, primarily, by decrees of the central executive committees of the Union, of the individual republics and of the Bolshevist party, and, secondarily, by the decrees of the various commissariats and government bureaus, the law of the land is subject to a constant flux from day to day, and specific policies and principles of government are subject to frequent change. This has led to an extreme specialization by the lawyers as mentioned in "The Soviet Legal System," Albert H. Robbins, published in the November, 1933, issue of the JOURNAL.

After the Bolsheviks had consolidated their position, the lawyers in each city, district and province were organized in a number of unions or co-operatives. Each co-operative was divided into a number of collegia or units, made up of various numbers of individual lawyers. In principle, the members of the cooperatives were to attach themselves to the collegia in such a manner as to bring about an equal distribution of highly skilled lawyers, specialists and the like, along with those of less skill and experience, to the end that the "productive strength" of the separate collegium should be comparatively equal. Furthermore, the principle was established that the highest duty of the lawyer to the proletarian state, was in the protection of and judicial assistance to the "toiling masses" in the provincial, district and superior courts. Neither of these principles has been followed to the satisfaction of the authorities.

As one of the original tenets of the Bolshevist party was equality of income, this principle was carried over into the collegia. Therefore, upon the appearance of a client and the disclosure of his case, the presidium or presiding council of the collegium would fix the fee in accordance with the social condition of the client, the amount of his property, and the importance or gravity of the case. If the client expressed no preference as to the lawyer to be assigned to handle the case, the presidium, after considering the special character of the case and the work in which its various members were engaged, would assign the matter to one of the members. This system has led to more or less favoritism in the assignment of desirable cases.

As a result of the above system, although the income of the collegia would vary in accordance with the quantity and importance of the cases presented to them, the income of the individual members was limited to a fixed monthly minimum, as stated by Robbins. Any surplus over the minimum monthly wages of the members was used to defray administrative expenses, stenographic services, rent, social insurance, etc., and the balance, if any, was turned over to the co-operative in whose jurisdiction the collegium was located.

This method of paying a fixed minimum monthly income, without regard to the skill of the member or the complexity or intricacy of the case, came to be recognized, not only in the legal field, but in all production, as a stumbling block and detriment to progress. At the 17th Congress of the Bolshevist Party, in Moscow, January, 1934, the principle of "uravnilovka" (leveling, treating all on

*"The sources of information for the enclosed article," Mr. Thorpe writes us, "are Stalin's speech before the 17th Congress of the Bolshevist Party at Moscow in January, 1934, as reported in *Pravda*, a decree of the Supreme Court of the R. S. F. S. R., published in No. 7, March, 1934 issue (printed in April) of *Sovetskaya Ustitsiya* (Soviet Justice), and an article appearing in No. 23, August, 1934 issue (printed in September) of *Sovetskaya Ustitsiya*, bearing a foot note by the editors, 'Published for Discussion.' *Sovetskaya Ustitsiya* is the official organ of the People's Commissariat for Justice of the Russian Socialist Federated Soviet Republic."

a par, equal income for all), was strongly condemned in Stalin's report. In December, 1933, just prior to the Party Congress, the Peoples' Commissariat for Justice of the Russian Socialist Federated Soviet Republic, presented a report to the Supreme Court, pointing out what the commissariat considered to be numerous faults and deficiencies in the control, regulation and action of the individual members of the collegia. The Supreme Court through its presidium, has direct control of the lawyers of the cooperatives, since the lawyers are considered to be officials of the court. The Supreme Court, early in 1934, published a decree which reviews and approves the report of the commissariat made the preceding December, which foretold, as far as the lawyers were concerned, the adverse report of Stalin as to the effects of "uravnilovka." The decree states, in part:

"5. The basis on which fees are charged is different in the various districts, and, in many instances, is not sufficiently flexible and mobile as it is too greatly stabilized as regards the different members of the collegia, and by an open liberalism and a leveling tendency, all stimuli for better work (quantity and particularly quality) are entirely absent. Such being the case, a number of the members of the collegia, being assured of their proportionate share of the income, do not interest themselves in the quality of the work of the collegia, nor in their own qualifications, and live at the expense of the others."

Numerous other criticisms of and objections to the lawyers' co-operatives were raised, such as, the failure of the collegia to locate their offices conveniently for the benefit of the working masses, the failure of the courts to recognize the value of the lawyers in the procedure of the court, and the lack of proper training of a part of the members of the bar. The underlying cause for many of the objections can be traced directly to the principle of "uravnilovka."

After a long recitation of what the court considers to be bad and objectionable conditions, the decree proceeds to establish rules and regulations intended to remedy the faults. As to the question of income or fees, the court decreed:

"8. It is proposed that the presidium of the collegia review the established system of making charges to the end that "uravnilovka" shall be avoided and to bring about efforts to stimulate the work of the collegia. . . .

"9. . . . The co-operatives are obliged to make suitable differentiation in honorarium in accordance with the character and complexity of a case, and the social condition and property of the particular client."

The court gave the co-operatives two months within which to comply with the conditions established by the decree.

In accordance with that part of the decree relating to "uravnilovka," the lawyers' collective or co-operative of Leningrad, probably from the influence of the piece-work method of payment introduced for factory production, established a somewhat similar system. By this system, a set value, count or "ballot" was established for all of the various services performed by a lawyer, each member of a collegium being expected to turn out a minimum amount of work each month. For all work above the minimum, a fixed value was established, for example, a consultation rated 2 ballots; a written plea of an ordinary kind, 2 ballots, if of medium intricacy, 5 ballots, and if intricate, 8 ballots.

On this foundation the award of increased compensation for all "ballots" over the minimum was established. Regardless of the volume of work performed by a lawyer in a calendar month, the maximum reward he could gain was limited to a 30% increase over his monthly salary. This system of payment for piece-work has succeeded in raising the quantity and quality of factory production, but in a few months it has been found that the professions, the lawyer, doctor, artist, etc., can not be paid on the same basis as the artisan. The "ballot" system caused an increased output on the part of the lawyer, but the quality seriously depreciated. It has also been found that the average lawyer carefully counted his "ballots," and when he had enough to insure receipt of the maximum award, did no more work that month, but husbanded his efforts to carry remunerative work over to the credit of the succeeding month.

The question of remuneration is still further complicated by the fact that the courts have the right to appoint lawyers for the benefit of certain classes of workers. The appointments are not made individually, but are directed to a collegium. The presidium of the collegium assigns the case to one of the members. These are unremunerative cases since neither the client nor the state, reimburses the collegium. The result of this situation is that the collegium has a tendency to appoint the less experienced and skillful members to handle such work, reserving the more proficient lawyers for remunerative cases where there is a possibility of further employment by the client.

Discussions of the deficiences of the "ballot" system of rewards and of some method of assuring a better distribution among the more skilled attorneys, of the public unremunerated cases, is now taking place in the Soviet Union. The necessity of catering to the human desire to better his material situation is now generally recognized by paying the artisan on a piece-work basis, this system of payment has failed to produce proper results as applied to the legal profession, and now the lawyers' co-operatives are striving to secure remuneration for the individual lawyer on the basis of the value or quality of his work, quantity being relegated to a secondary position. Just how this can be accomplished in a country where the lawyer is in eclipse and without straining the present tenets of the Party as to individualism, remains to be seen.

For Specially Licensed Criminal Lawyers

"I suggest as a remedy that the place of a criminal lawyer as an officer of the state should be recognized. He should be specially licensed and no attorney should be permitted to engage in the criminal practice merely upon a general license to practice law. High qualifications as to character and probity should be required and rigidly enforced. A preliminary period of practice in the civil courts of five or more years should be necessary, so that he shall have established himself both as to ability and integrity before his admission to the criminal practice. The attorney so licensed should be held to the strictest responsibility as an officer of the state charged with important duties. Breach of duty or unethical conduct should be visited with swift and severe discipline by special proceedings and tribunals created for that purpose. Possibly some form of control over compensation should be instituted sufficiently flexible to meet special conditions yet rigid enough to prevent the charge that wealth cannot be convicted and to assure the person of small means capable counsel. It should be a high honor to be admitted to the criminal practice and a matter of jealous concern to those so admitted."—From "In Defense of Criminal Lawyers," by A. W. Trice, in the *Oklahoma State Bar Journal* (*Nov.*)

Remarks on Moving the Admission of a Class of Candidates for the Bar*

BY CHARLES P. MEGAN

MAY it please the Court: I have the honor of moving the admission of these young men and young women to the bar of Illinois.

This is the first step in the process by which older lawyers turn over to the new generation the profession of which we are trustees for them, and they now for *their* successors. As fathers see their sons coming upon the field of battle, full-armed, eager for the fray, there is an agony of desire to help the young men in some great way, to pass on the wisdom of the ages, to make the fight less terrible, the outcome more sure, to give the sons what their fathers never had,—security, a place in the sun, a key to the maze, opportunity without fear, a roll of honor with no casualty list, the palm of victory without the dust. We know this cannot be done, and it is better so; the young men would not thank us for a life without conflict; when all is over, they will have "lived and worked with men"; their lives will have been spent in the finest fellowship on earth, doing the most important things in the world, lives rich and full and dangerous, the lives of *men.*

It *is* a great fellowship, but its tests are merciless and its judgment unerring. The weak are known, and the strong, the timid and the brave, the mean and the great-hearted. Is this profession of the law, then, a great monster without heart, as cold as Fate? On the contrary, nowhere else shall we find the individual counting for so much, and the new lawyers will see, too, that the bar is friendly and helpful.

Will they also find that it is honorable and true? This is the question that cartoonists put on the front page and editorial writers in their columns. Lawyers sometimes answer too quickly, confess too much. At the recent meeting of the American Bar Association at Milwaukee, visitors observed a large painting that was hung in the lobby. It portrayed that strange medieval cult of the Flagellants,—men, women, even young children, who flogged themselves cruelly for their souls' sake, "a form of exalted devotion" which "occurs in almost all religions." It struck a friend of mine that this was a most appropriate subject for the key-note of a lawyers' meeting that was all too self-condemnatory. The salvation of the bar lies elsewhere, — in something positive and active, in the conscience of the individual lawyers.

Let me say a word on this, and have done. The origin of the idea of conscience, something guiding us from within, not from without, is obscure. That "silent yet prophetic people who dwelt by the Dead Sea" had glimpses of it, in their moments of communion with the Most High, and in the thirteenth century of the Christian era the idea began to be generally understood, and became a dominant factor in the life of man. It is no longer regarded simply as a negative, a reproving force; it is the mainspring of our movement upward, the creative force of all professional associations that have not in them the seeds of decay. Let these young men allow the cartoonist, the editorial writer, and the public speaker to do their *thinking* for them, if they must, but I beg of them, in the name of their profession, not to let anyone do their *believing* for them. They may be assured that the courts, ever the guardians of the moral standards of the profession, will be the first to respect and sustain them in their independence.

We talk of the *quality* of a man's conscience, but we do not sufficiently reflect on the importance of the *quantity* of conscience in a community, a State, a nation, or a profession. "The Greeks," said John Morley, "became corrupt and enfeebled, not for lack of ethical science" (there were *thinkers* enough among them,) "but through the decay in the numbers of those who were actually alive to the reality and force of ethical obligations." This is the true battle-field; does it not thrill us, can we not see in our mind's eye, from afar, the scene in many an obscure law office, where a brave man is proving to himself—for there are no spectators to cheer and inspire him—that he will sacrifice all, that he will endure all things, sooner than give up the faith of his fathers, the ideals into which he was born.

This is what leaders of the bar reckon on, in times of stress,—that when any moral question is put squarely up to the bar the reaction is always right; no man who relied on this ever had his confidence betrayed. Here then is waiting for these young men and young women, in the hour of their country's greatest need, for the preservation and glory of their profession, a field of use for the best and most characteristic thing they have, their own most precious possession, far above all intellectual gifts, which does not fail from use, but grows ever clearer and stronger,—the unspoiled conscience that came to them from on high.

If it please the Court, on behalf of the State Board of Law Examiners, I move the admission of this class to the bar.

*This brief address was made upon moving the admission of a class of Candidates for the Bar, in the Supreme Court of Illinois, at Springfield, October 11, 1934

The "Sleeping Sickness" of Democracy

(From "The Growing Power of the Presidency," Boston Univ. Law Rev., June)

The peril in America is not in any yearning for a dictatorship, but in the amazing growth of an overwhelming national bureaucracy upon which the population is inclined to lean. The activities attaching to the federal government are vast and growing, absorbing the thrift accumulations of generations and mortgaging the economic future of the country. The peril is in the sleeping sickness of democracy, the propensity in man, as Bernard Shaw put it, to dread liberty because of the bewildering responsibility it imposes and the uncommon alertness it demands. The fighting edge of the older liberalism which between 1860 and 1920 entered into conflict with materialism and greed and every foe, domestic or foreign, and never came off vanquished, is dull today. We have no time for reflective thinking. We are in a hurry for rapid change and we do not sufficiently appreciate the Constitution as a great tradition, one that does not enslave us but liberates and enriches us.

A Correction

In the December, 1934, issue of the JOURNAL the name of the author of the article "The Warsaw Convention and the C. I. T. E. J. A." was mistakenly printed as "Stephen Blatchford." The author is Stephen Latchford, and he is Technical Assistant, Treaty Division, Department of State, Washington, D. C.

NEWS OF STATE AND LOCAL BAR ASSOCIATIONS

California

Los Angeles Bar Association's Pageant, "The Making of the Constitution," Scores Notable Success — Witnessed by 14,000

The Los Angeles Bar Association's pageant "The Making of the Constitution," presented on Nov. 16 and 17, was a tremendous success, according to accounts in the local newspapers and in the November issue of the Association's Bulletin. It was given in the Shrine Auditorium and more than 14,000 persons, most of them students at local universities and pupils of the public schools, attended the two presentations. The script for the pageant was adapted and arranged by Rex Hardy, Director and Producer, after the compilation and script of Robert K. Ryland of the Kansas City, Mo., Bar. Mr. Ryland's script, it will be recalled, was used in the pageant put on by the Kansas City Bar Association on Sept. 17, 1932, the one hundred and forty-fifth anniversary of the signing of the Constitution.

"'The Making of The Constitution,' says the Bulletin, "was a great show, splendidly staged and produced. The roles of the makers of our Constitution were enacted by eminent members of the Los Angeles Bar, chosen by the Pageant Committee with care and excellent judgment. It was not easy for the thousands who packed the theater both nights to realize that they were not seeing and hearing a gorgeous stage production by some master craftsman, but instead a stately and dignified reproduction of an historical event. One lost all idea of a mere stage show and listened to the memorable debate as intently as though the real characters were contending for their convictions on the most vital provisions of our Constitution. It was easy to imagine that George Washington, Alexander Hamilton, James Madison, Edmund Randolph, Robert Morris, Benjamin Franklin, Rufus King, Charles Pinckney, Gouverneur Morris, and the others who sat in the convention and whose names are familiar to every schoolboy and girl as signers of the Constitution, were present in the flesh, so splendidly were the characters enacted."

The Pageant Committee consisted of Joe Crider, Jr., General Chairman, E. D. Lyman and J. Karl Lobdell. The committee expressed its grateful appreciation to the Kansas City Bar Association for the inspiration its example had afforded and the valuable assistance its research had furnished.

Kentucky

Commissioners and Officers of Newly Constituted Kentucky State Bar Elected—Permanent Office to Be Established at Frankfort

At the first election of Commissioners of the Kentucky State Bar, conducted under the rules promulgated by the Court of Appeals under the 1934 Bar Organization Act, the following Commissioners were chosen: First District, L. B. Alexander, Paducah, B. N. Gordon, Madisonville; Second District, Arthur D. Kirk, Owensboro, Coleman Taylor, Russellville; Third District, C. C. Duncan, Monticello, J. R. White, Glasgow; Fourth District, Lafon Allen and John C. Doolan, Louisville; Fifth District, Henry Jackson, Danville, James Park, Lexington; Sixth District, Leonard J. Crawford, Newport, Gregory W. Hughes, Covington; Seventh District, Francis M. Burke, Prestonsburg, Robert T. Caldwell, Ashland.

At the organization meeting of the Commissioners, held at Frankfort November 27th, officers of the State Bar were elected as follows: President, Robert T. Caldwell, Ashland; First Vice-President, Coleman Taylor, Russellville; Second Vice-President, J. R. White, Glasgow; Secretary, Samuel M. Rosenstein, Frankfort; Treasurer, Hill Cheshire, Frankfort. Mr. Cheshire was also appointed Registrar by Chief Justice Rees.

Regular meetings of the full commission will be held quarterly at Frankfort, where a permanent office of the State Bar will be maintained by the Secretary. The functions, other than disciplinary, formerly exercised by the voluntary Kentucky State Bar Association which is being succeeded by the integrated State Bar, will be continued through the usual Standing Committees appointed from the membership of the bar as a whole.

Maryland

Executive Council of Maryland State Bar Association Elects New President to Fill Vacancy Caused by Recent Death of Judge Digges—Thirty-Ninth Annual Meeting

T. Howard Duckett was elected President of the Maryland State Bar Association by the Executive Council to succeed Judge W. Mitchell Digges, who died a few weeks ago. Mr. Duckett lives at Hyattsville, Maryland, and is in active practice at that place as well as in Washington, D. C., and has a host of friends in both places.

The Thirty-ninth Annual Meeting of the Association was held at the Hotel Ambassador, Atlantic City, June 28th, 29th, and 30th, 1934, with a program that was known as the 300th Anniversary of the Founding of Maryland. The meeting was presided over by Judge Samuel K. Dennis, the President, Chief Judge of the Supreme Bench of Baltimore City, who addressed the Association on the subject "Then and Now," and gave an historical survey of the administration of the Law in colonial times as compared with that of the present. The usual reports of the several committees, including those on Legal Education and Laws, were submitted, showing that the Association is deeply interested in advancing the legal requirements for admission to the Bar. A resolution was adopted advocating the passing of legislation to the effect that the matter of educational requirements for admission to the Bar should be placed in the hands of the Court of Appeals of Maryland. The present legal requirement is that applicants, prior to taking up the study of Law, must have had at least a High School diploma or

education amounting to the equivalent of one. For several years the Association has endeavored through legislative enactment to increase this requirement, but without success.

The program included a debate on the question "In the Trial of all Criminal Cases the Jury Shall Be the Judges of the Law as Well as of Fact." The affirmative was presented by Col. A. W. W. Woodcock and Robert R. Carman, both former District Attorneys of the U. S., and the negative by Herbert R. O'Conor and James Clark, now acting as States Attorneys in Maryland. A very interesting paper was presented by Dr. Manfred S. Guttmacher, Medical Officer of the Supreme Bench of Baltimore City, his subject being "The Insanity of George III." Hon. J. Crawford Biggs, Solicitor General of the U. S., addressed the Association on the subject "The Supreme Court of the U. S." An address was made by Hon. Alexander A. Troyanovsky, Ambassador of the U. S. Soviet Republic at Washington, his subject being "Criminal Law in the Soviet Union." At the banquet an address was made by Hon. Donald Richberg, General Counsel of NRA.

The Association expressed its appreciation of the work being done by the Law Institute and made provision for the preparation and printing of Annotations in Maryland of the several subjects already completed by the Institute.

The meeting was probably the largest ever held by the Association. It is deeply interested in the crime situation and is cooperating in every possible manner with the American Bar Association along this line.

In addition to the President, the election of officers included that of R. Bennett Darnall, Treasurer, and James W. Chapman, Jr., Secretary, both of whom have served the Association many years.

Oregon

Oregon State Bar Referendum Shows Approval of Plan to Change Method of Selecting Judges to Appointment by Commission — Whipping Post Favored in Certain Cases

The results of the Bar referendum on the recommendations contained in the reports of the Legislative Committee and the Committee on the Selection of Judges of the Washington State Bar are contained in the October issue of the State Bar Review.

Under the head of "Selection of Judges," the Bar was asked first, "Do you favor any change in the plan of selecting judges?" and the vote was 739 in favor of change as against 357 opposed. The next question was, "Do you favor a Constitutional Amendment, providing for the appointment of judges of the Superior and Supreme Courts?" and it was answered in the affirmative by 590 and in the negative by 464. The last question was "Do you favor such constitutional amendment and legislation as may be necessary to provide for the appointment of Supreme and Superior Judges by a commission consisting of the Governor of the state, the governors of the State Bar Association and three electors to be appointed by the Governor?" This proposal carried, 581 to 403.

There were four legislative proposals, all of which were approved. The first was that the committee submit to the 1935 State Legislature a new code for Justice Courts and a constitutional amendment as outlined in the report of the committee. The second was that the office of constable be abolished and the duties thereof be imposed upon the sheriff. The third was that the act creating the Washington State Patrol be amended so as to give the Governor power by executive order to draft local police officers and automatically thereby make them members of the Washington State Patrol. The vote was overwhelming in favor of all these.

When it came to the proposal that the punishment of whipping be authorized in the discretion of the sentencing judge in certain cases, there was a decided difference of opinion. The proposal to authorize it in cases of crimes committed with force or violence or with the threat or offer thereof, or by the aid of or with the use of dangerous weapons, was approved 707 to 381. It was also approved, by a vote of 608 to 445 in all cases of persons convicted for a second time or more of felony. But it was disapproved, by a vote of 516 to 538, in cases of a conviction for a felony where a sentence of imprisonment is imposed or suspended. The final proposal under this head—that such punishment be imposed only upon males whose physical condition will permit them to receive the punishment without substantial danger of permanent physical injury—was approved.

The same issue of the State Bar Review gives the following account of the joint meeting of the Oregon Bar and the Pacific Coast Institute of Law, which was held last September:

"A group of ten members of the Washington Bar attended the joint conference of the Oregon State Bar Association and the Pacific Coast Institute of Law held at Eugene, Oregon, on September 6, 7 and 8 last. A wide variety of subjects was covered by the program and the speakers were men of undoubted ability and prominence in law school work.

"The addresses for the most part dealt with current lego-social problems and were presented by nationally recognized social scientists and legal scholars from different parts of the United States. Five of these speakers were deans of law schools including Illinois, Iowa, Pennsylvania, Stanford and Washington. Three were professors of law from California, Columbia and Northwestern. . . ."

Tennessee

Bill for Integration of Tennessee State Bar Prepared by Special Committee—Approved by Association, With Certain Amendments, at Special Session

The special committee of the Tennessee State Bar Association appointed to draft a proposed act for legislative Bar integration in that state has completed its work, and the draft was approved, with a few amendments, at a special session of the Association held at Nashville on Dec. 15. The measure is along the lines which have proved satisfactory in other states.

The bill provides for the creation of a public corporation to be known as the Tennessee State Bar Association. The

first members will be those now entitled to practice law in Tennessee. After passage of the act, all persons admitted to practice will automatically become members of the Tennessee State Bar Association.

A board of governors composed of five members is provided for in the bill. One member will be named from each grand division of the State, with one member from the State at large. The president of the association will be a member ex-officio. The first board will be selected at the next session of the Bar Association and the members will serve for two years.

Dues of not more than $5 per year for active attorneys and a maximum of $2 for inactive members are provided for in the bill. Any member will be suspended when dues are in arrears and two months' notice has been given. When a member has been suspended he will have no right to practice law until he is reinstated by payment of dues. Persons under suspension or who have been disbarred will be guilty of a misdemeanor if they attempt to practice law.

The board will have authority, for good cause shown and after a hearing, to recommend to a court of competent jurisdiction that it disbar and reinstate members of the State Bar, and that it discipline by reprimand or suspension.

The special meeting at Nashville was a very representative meeting, although the attendance was naturally not as large as is had at the regular annual convention. The integration bill was discussed in great detail. At first the sentiment against it appeared to be greater than that in favor of it. But after some two hours and a half of discussion the opposition gradually weakened and the favorable sentiment grew stronger, until at the final vote the bill passed with an overwhelming majority.

The Movement for Bar Integration

The Committee on Integrated Bar Act of the Indiana State Bar Association has decided in favor of a bill similar to the Kentucky law, which empowers the Supreme Court to prescribe, by rule, the form of organization and lesser details. A strong reason for preferring this method is that amendments, when found necessary, may be effected on short notice. There have been various reasons for desiring to amend the California bar act, sufficient to result in legislative action every two years. This is an unnecessarily slow and laborious method. In Kentucky the bar got just what it wished in the court rule; its only regret is for the limitation imposed by the legislature on dues, fixed at two dollars, and for an unfortunate provision regarding lay practice. At its 1934 convention the State Association nevertheless expressed great satisfaction in getting what the legislature was disposed to give. The rules were promulgated later and next year will see the first meeting of the new State Bar.

The Kansas Judicial Council, properly considering everything that affects the administration of justice, has given support to the State Bar Association's ambition for statutory powers and has suggested study of the Missouri situation. The Association presumably will make at least one more attempt to persuade the legislature before striving to get less than the whole loaf. And if it follows Indiana and other states in leaning on judicial rule-making, it is likely to succeed.

The Wisconsin State Bar Association appointed a special meeting to settle controverted parts in its integration bill which was held after the writing of these notes. The meeting was limited to the members of the board of governors representing each circuit, and to two additional delegates from each circuit to be chosen by the Association members called together in the circuits for this purpose. There are nine members of the board in the Milwaukee circuit and one each for nineteen other circuits.

In Missouri the defeat of the bar act in 1933 led to Supreme Court rules which provided for the bar the same machinery for enforcing discipline which exists under statute in the states having official state bars. Although the Supreme Court rules integrated the profession to the extent of requiring every practitioner to contribute to the operation of this plan, the Court did not conceive it to be its duty to further promote integration. And the State Bar Association did not consider it politic to further seek legislative sanctions. A suitable policy was submitted at the recent annual meeting by a special committee and reserved for decision next year. It is proposed that the Association change its name to the State Bar of Missouri and assume that it will acquire the allegiance of all practitioners. Provision is made for an executive committee with powers comparable with those of an official state bar board. The committee will comprise the State Bar officers, editor of its Journal, chairman of its judicial conference, general chairman of the Supreme Court's disciplinary committees (a former president of the Association), the chairman of the state judicial council, and the chairman of the conference of local bar presidents. The president and other customary officers are to be nominated by a general council, as in the American Bar Association. The members of the general council are to be elected at annual meetings of the circuit bar organizations. Membership to the satellite circuit bar organizations is open to all lawyers who pay their dues to their locals and to the State Bar. The new constitution creates a judicial conference to comprise the judges of the appellate and circuit courts and the members of the judicial council; also a conference of the 152 members of the bar disciplinary members; also a conference of the presidents of thirty-eight circuit bar organizations.

The plan would give Missouri a more thoroughly implemented bar than exists in any state. There would be an integration of the judiciary separately and with the State Bar; the judicial council is tied in; the disciplinary machinery, while controlled by the Supreme Court, has a place in the new scheme; the conference of circuit bar presidents is equivalent to a highly selected delegate conference. While membership is not compulsory no excuse is afforded any lawyer for refusal to join. It is easy to presume for such organization a great vitality in every circuit and resultant significance for the central body, which retains accustomed democratic powers.

The statement was made in this department of the Journal for November that when the Oklahoma State Bar was created in 1929 the names of 20,000 lawyers were found on the Supreme Court roll. The information upon which this statement was made was grievously at fault. There were less than 8,000 names on the roll. And while there were instances of admission on motion, by which the then Supreme Court ignored the examining board, they were not numerous. This reporter's informant, while speaking in good faith, was deceived by gossip which had little foundation.

The Michigan State Bar Association, after three years' study by its committee on judicial selection, approved of a plan at this year's convention which is especially timely. The plan is for executive appointment for good behavior, subject to confirmation by the state judicial council, and with provision for involuntary retirement after hearings to be conducted by the judicial council. It is timely in view of the fact that an initiated amendment to the constitution to provide for non-partisan nomination and election of judges was defeated on Nov. 6. Plans are being made for a citizens' convention to consider amendments to be submitted to the voters at the 1935 spring election and the press says that the appointment of judges is on the agenda. The non-partisan election amendment was not generally favored by the bar but was nearly carried by the voters. There are reasons for believing that the people are prepared to "get the judges out of politics." Half of the state's judges have been appointed and tenure ordinarily is for life. No long step is proposed.

The Kansas Bar Association at this year's meeting voted for an appointive judiciary and authorized introduction of a resolution in the coming legislature for submission of an amendment to the constitution. Success is not anticipated immediately but the Association is bucked up for as long a campaign as may be needed.

The success in the recent election in California, whereby appointment of judges is made possible for counties which adopt the new constitutional provision, is due to the untiring efforts of the Los Angeles Bar Association and the California State Bar. Aid came from the state Chamber of Commerce, which was induced by the State Bar to sponsor this amendment. One differing only slightly, sponsored directly by the State Bar, and applicable only to Los Angeles County, was narrowly defeated.

In Washington too the new State Bar has squared itself to get the judges out of politics. Selection is to be made for the accustomed terms by a majority of a commission of eleven members, comprising the governor, three lay citizens chosen by the governor, and the members of the State Bar board of governors. Provision is made for retirement for cause by the commission. The plan was approved in a state-wide referendum of the bar.

One of the fruits of state bar integration in New Mexico is the adoption of all of the sixth chapter of the Law Institute's code of criminal procedure under rule-making power conferred upon the Supreme Court in 1933. Criminal procedure should not be such a stubborn thing when a supreme court has power to reform it. In Arizona preparations are under way by the State Bar to acquire for its high court rule-making power and also a judicial council. The judicial council created by the South Dakota State Bar reports that its criminal procedure already, with very few exceptions, is on a par with the model code.

A survey of the legal profession, as suggested by Dean Charles E. Clark of Yale Law School in his president's address to the American Law School Association last December, has been in progress this year in Wisconsin, and such a survey was authorized by the Idaho State Bar at its latest convention. Already it seems probable that the product of such surveys will be of the greatest educative value to the profession, forming a sure foundation for policies involved in admission to practice and otherwise.